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12 **UNITED STATES BANKRUPTCY COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14
15 In re
16 INGENU, INC.,
17 Debtor.

CASE NO. 20-03779-LT11
Chapter 11
**DISCLOSURE STATEMENT FOR
CHAPTER 11 PLAN OF
REORGANIZATION FOR THE
DEBTOR DATED OCTOBER 30, 2020**

Date: December 15, 2020
Time: 9:00 a.m.
Ctrm: Dept. 3, Room 129
United States Bankruptcy Court
325 West F Street
San Diego, CA 92101-6991
Judge: Hon. Laura S. Taylor

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1 TABLE OF CONTENTS

	Page
DISCLAIMER	1
I. INTRODUCTION.....	4
A. General	4
B. Brief Summary of Plan	4
C. Voting Instructions and Procedures	7
1. Voting Procedures, Ballots and Voting Deadline.....	7
2. Voting Record Date	9
3. Incomplete Ballots	9
4. Defects, Irregularities, Etc.	9
5. Withdrawal of Ballot	10
D. Confirmation Hearing	11
II. CERTAIN EVENTS PRECEDING THE DEBTOR'S CHAPTER 11 FILING	11
A. The Debtor's Business	11
B. The Debtor's Bankruptcy Filing	12
C. Summary of Prepetition Secured Indebtedness	13
III. EVENTS DURING THE CHAPTER 11 CASE.....	14
A. DIP Financing	14
B. Retention of Counsel.....	15
C. Retention of Sherwood and Marketing Process.....	15
D. Claims Bar Date	15
IV. SUMMARY OF THE PLAN.....	15
A. Introduction	15
B. Classification of Claims and Interests.....	16
C. Treatment of Claims and Interests and Summary of Distributions under the Plan.....	17
1. Administrative Claims	17

1	2.	Allowed Priority Tax Claims.....	19
2	3.	DIP Facility Claims	19
3	4.	Summary of Classification and Treatment of Holders of Allowed Claims and Interests that are Placed in Classes	19
4	D.	Means for Execution of the Plan.....	29
5	1.	Continued Corporate Existence and Vesting of Assets in the Reorganized Debtor	29
6	2.	Corporate Action	30
7	3.	Certificate of Incorporation and Bylaws	30
8	4.	Release of Liens.....	30
9	5.	Cancellation of Interests and Authorization and Issuance of New Stock.....	31
10	6.	The Exit Facility	31
11	7.	Provisions Relating to Post-Confirmation Administration of the Reorganized Debtor.....	33
12	8.	Disbursing Agent	34
13	9.	Closing of Case.....	34
14	10.	Effectuating Documents; Further Transactions.....	34
15	11.	Withholding and Reporting Requirements	35
16	12.	Quarterly Reports and United States Trustee's Fees.....	35
17	13.	Preservation of Causes of Action	35
18	14.	No Liability for Solicitation or Participation.....	37
19	15.	Exemption From Certain Taxes.....	37
20	E.	Distribution Provisions	38
21	1.	Distributions.....	38
22	2.	Distributions of Cash	38
23	3.	Effective Date and Subsequent Distributions.....	38
24	4.	Delivery of Distributions and Undeliverable Distributions	38
25	5.	Time Bar to Cash Payments and Disallowances	39
26	6.	Minimum Distributions	39

1	7. Transactions on Business Days	40
2	8. Distributions after Allowance.....	40
3	9. Disputed Payments	40
4	10. No Distributions in Excess of Allowed Amount of Claim.....	40
5	11. Reservation of Claim Objections.....	40
6	F. Treatment of Executory Contracts and Unexpired Leases	41
7	1. Rejection of Executory Contracts and Unexpired Leases	41
8	2. Bar Date for Filing Rejection Claims	42
9	G. Conditions Precedent to Effectiveness of the Plan	42
10	1. Conditions to the Effective Date	42
11	2. Waiver of Conditions.....	43
12	H. Modification of the Plan	43
13	I. Releases and Related Matters	43
14	1. Releases by Holders of Claims for Post-Petition Conduct.....	43
15	2. Releases by the Debtor	44
16	3. Injunction Related to Releases	45
17	J. Dissolution of the Committee	46
18	K. Default.....	46
19	L. Effect of Confirmation of the Plan.....	47
20	1. Discharge of the Debtor.....	47
21	2. Injunction	48
22	3. No Waiver of Discharge	49
23	4. Binding Effect.....	49
24	5. Term of Injunctions or Stays	49
25	V. THE REORGANIZED DEBTOR.....	49
26	A. The Exit Financing.....	49
27	B. Issuance of New Common Stock	50
28	C. Business and Property of the Reorganized Debtor	50

1	D.	Management of the Reorganized Debtor	50
2	E.	Projected Financial Information	50
3	VI.	CONFIRMATION OF THE PLAN.....	51
4	A.	Introduction	51
5	B.	Voting.....	51
6	C.	Acceptance	52
7	D.	Confirmation of the Plan.....	52
8	1.	Best Interests of Holders of Claims and Interests	54
9	2.	Feasibility.....	56
10	3.	Acceptance by Impaired Classes	57
11	4.	Cram Down.....	58
12	5.	Classification of Claims.....	59
13	VII.	CERTAIN RISK FACTORS TO BE CONSIDERED	59
14	A.	Financing Risks.....	59
15	B.	Risk of Non-Confirmation or Withdrawal of the Plan	59
16	C.	Non-Consensual Confirmation of the Plan.....	60
17	D.	Alternatives to the Plan	60
18	VIII.	SECURITIES LAW MATTERS	61
19	A.	General	61
20	B.	Issuance of New Stock.....	61
21	C.	Resale of New Common Stock	61
22	IX.	CERTAIN FEDERAL INCOME TAX CONSEQUENCES	62
23	A.	United States Federal Income Tax Consequences to Debtor.....	62
24	1.	Cancellation of Indebtedness Income.....	62
25	2.	General Section 382 Annual Limitation.....	63
26	B.	United States Federal Income Tax Consequences to Holders of Claims	64
27	1.	Distributions in Discharge of Accrued Interest	64
28			

1	2.	Character of Gain or Loss; Tax Basis; Holding Period.....	65
2	3.	Limitation on Use of Capital Losses	65
3	4.	Information Reporting and Backup Withholding.....	66
4	X.	CONCLUSION	67
5			

6 **Exhibit A:** Chapter 11 Plan of Reorganization

7 **Exhibit B:** Schedule of Claims by Classes

8 **Exhibit C:** Feasibility Projections

9 **Exhibit D:** Liquidation Analysis

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DISCLAIMER

THIS DISCLOSURE STATEMENT (THE “DISCLOSURE STATEMENT”) AND ITS RELATED DOCUMENTS ARE BEING USED IN CONNECTION WITH THE SOLICITATION OF VOTES ACCEPTING THE CHAPTER 11 PLAN OF REORGANIZATION FOR INGENU INC., A DELAWARE CORPORATION (THE “DEBTOR”), DATED October 30, 2020 (AS MAY BE AMENDED, THE “PLAN”) PROPOSED BY THE DEBTOR.

8 THIS DISCLOSURE STATEMENT CONTAINS SUMMARIES OF
9 CERTAIN PROVISIONS OF THE PLAN, STATUTORY PROVISIONS,
10 DOCUMENTS RELATED TO THE PLAN, EVENTS IN THE CHAPTER 11 CASE
11 AND FINANCIAL INFORMATION. THIS DISCLOSURE STATEMENT IS NOT
12 INTENDED TO REPLACE A CAREFUL AND DETAILED REVIEW AND
13 ANALYSIS OF THE PLAN AND APPLICABLE STATUTORY PROVISIONS,
14 DOCUMENTS OR FINANCIAL INFORMATION, BUT IS RATHER INTENDED
15 ONLY TO AID IN AND TO SUPPLEMENT SUCH REVIEW. THIS
16 DISCLOSURE STATEMENT IS QUALIFIED IN ITS ENTIRETY BY
17 REFERENCE TO THE MORE DETAILED PROVISIONS SET FORTH IN THE
18 PLAN (WHICH IS ATTACHED HERETO AS EXHIBIT A). IN THE EVENT OF
19 A CONFLICT BETWEEN THE PLAN AND THIS DISCLOSURE STATEMENT,
20 THE PROVISIONS OF THE PLAN SHALL GOVERN. ALL HOLDERS OF
21 CLAIMS AND EQUITY INTERESTS IN VOTING CLASSES ARE
22 ENCOURAGED TO REVIEW THE FULL TEXT OF THE PLAN AND TO READ
23 CAREFULLY THIS ENTIRE DISCLOSURE STATEMENT, INCLUDING ALL
24 EXHIBITS ATTACHED HERETO, BEFORE DECIDING WHETHER TO VOTE
25 TO ACCEPT OR TO REJECT THE PLAN.

26 THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT
27 ARE MADE AS OF THE DATE HEREOF, AND THE DELIVERY OF THIS
28 DISCLOSURE STATEMENT SHALL NOT, UNDER ANY CIRCUMSTANCES.

1 CREATE ANY IMPLICATION THAT THE INFORMATION CONTAINED
2 HEREIN IS CORRECT AT ANY TIME SUBSEQUENT TO THE DATE HEREOF.
3 THE DEBTOR DOES NOT WARRANT OR REPRESENT THAT THE
4 INFORMATION CONTAINED HEREIN, INCLUDING THE FINANCIAL
5 INFORMATION, IS WITHOUT ANY MATERIAL INACCURACY OR
6 OMISSION.

7 THE SOLICITATION PERIOD PURSUANT TO THIS DISCLOSURE
8 STATEMENT WILL EXPIRE AT 4:00 P.M. (PACIFIC TIME) ON December 1,
9 2020 (THE “**VOTING DEADLINE**”). TO BE COUNTED, BALLOTS MUST BE
10 ACTUALLY RECEIVED IN ACCORDANCE WITH THE VOTING
11 INSTRUCTIONS BY THE DEBTOR ON OR BEFORE THE VOTING
12 DEADLINE. PLEASE SEE SECTION I.C OF THIS DISCLOSURE STATEMENT
13 FOR VOTING INSTRUCTIONS. BALLOTS MAY BE SUBMITTED VIA
14 ELECTRONIC MAIL (BUT NOT VIA FACSIMILE).

15 THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN
16 ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND
17 RULE 3016 OF THE BANKRUPTCY RULES AND NOT NECESSARILY IN
18 ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAW OR OTHER
19 NON-BANKRUPTCY LAW. THIS DISCLOSURE STATEMENT HAS BEEN
20 NEITHER APPROVED NOR DISAPPROVED BY THE SECURITIES AND
21 EXCHANGE COMMISSION (THE “**SEC**”), NOR HAS THE SEC PASSED UPON
22 THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED
23 HEREIN. PERSONS OR ENTITIES TRADING IN OR OTHERWISE
24 PURCHASING, SELLING OR TRANSFERRING CLAIMS OR EQUITY
25 INTERESTS OF THE DEBTOR SHOULD EVALUATE THIS DISCLOSURE
26 STATEMENT AND THE PLAN IN LIGHT OF THE PURPOSE FOR WHICH
27 THEY WERE PREPARED. HOLDERS OF CLAIMS AND EQUITY INTERESTS
28 SHOULD NOT CONSTRUE THE CONTENTS OF THIS DISCLOSURE

1 STATEMENT AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL OR TAX
2 ADVICE. EACH SUCH HOLDER SHOULD, THEREFORE, CONSULT WITH
3 ITS OWN LEGAL, BUSINESS, FINANCIAL AND TAX ADVISORS AS TO ANY
4 SUCH MATTERS CONCERNING THE SOLICITATION, THE PLAN, AND THE
5 TRANSACTIONS CONTEMPLATED THEREBY.

6 AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND
7 OTHER ACTIONS OR THREATENED ACTIONS, THIS DISCLOSURE
8 STATEMENT SHALL NOT BE CONSTRUED AS AN ADMISSION,
9 STIPULATION OR WAIVER, BUT RATHER AS A STATEMENT MADE IN
10 SETTLEMENT NEGOTIATIONS. THIS DISCLOSURE STATEMENT SHALL
11 NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING.

12 IF THE BANKRUPTCY COURT CONFIRMS THE PLAN AND IT
13 BECOMES EFFECTIVE, ALL HOLDERS OF CLAIMS AND EQUITY
14 INTERESTS (INCLUDING THOSE WHO REJECTED OR ACCEPTED OR WHO
15 ARE DEEMED TO HAVE REJECTED OR ACCEPTED THE PLAN AND THOSE
16 WHO DID NOT SUBMIT BALLOTS TO ACCEPT OR TO REJECT THE PLAN)
17 SHALL BE BOUND BY THE TERMS OF THE PLAN.

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1 **I. INTRODUCTION**

2 **A. General**

3 On July 27, 2020, (the “**Petition Date**”), the Debtor commenced a voluntary
4 case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court
5 for the Southern District of California (the “**Bankruptcy Court**”). The Debtor
6 continues to operate its business as debtor in possession pursuant to sections 1107(a)
7 and 1108 of the Bankruptcy Code.

8 The Debtor submits this Disclosure Statement pursuant to § 1125 of the
9 Bankruptcy Code in connection with the solicitation of votes on the Plan, a copy of
10 which is attached hereto as Exhibit A. This Disclosure Statement sets forth certain
11 information regarding the Debtor’s pre-petition and postpetition operations and
12 finances and the Debtor’s need to seek chapter 11 protection. This Disclosure
13 Statement also describes the terms and conditions of the Plan, the Debtor’s projections
14 after the Effective Date of the Plan, potential alternatives to the Plan, certain effects
15 of confirmation of the Plan and a description of the distributions proposed to be made
16 under the Plan. In addition, this Disclosure Statement discusses the confirmation
17 process and the voting procedures that the holders of Claims and Interests entitled to
18 vote must follow for their votes to be counted.

19 Capitalized terms used and not defined herein shall have the meaning ascribed
20 to them in the Plan unless the context requires otherwise.

21 **B. Brief Summary of Plan¹**

22 The Plan provides for the reorganization of the Debtor through (i) a debt-for-
23 equity exchange transaction whereby the Debtor’s second most senior secured
24 creditor, NDJR Grid Partners II, LLC (“**NDJR**”), will receive the equity in the
25 Reorganized Debtor in exchange for the release of NDJR’s pre-petition Secured
26

27

28 ¹ This summary is intended to provide only a brief overview of the Plan. The terms of the Plan shall
control over any description in this summary.

1 Claim (or, depending on the result of the Marketing Process (defined below), a portion
2 thereof) and (ii) the funding by NDJR of an exit facility that the Reorganized Debtor
3 will use to pay certain payments due in connection with the confirmation of the Plan.
4 . The Plan treats Secured Claims that are junior to the Pre-Petition Second Lien Claim
5 held by NDJR (Class 3)—specifically the Grid Secured Claim (Class 4), LFT Secured
6 Claim Class 5), JBJK Secured Claim (Class 6), Gilbert Trust Secured Claim (Class
7 7), Trilliant Secured Claim (Class 8) and Other Secured Claims Class 10)—as
8 Unsecured Claims (Class 11) on the grounds that the allowed amount of the Pre-
9 Petition Second Lien Claim exceeds the aggregate value of the Debtor's assets. Such
10 treatment is dependent on the Court determining, pursuant to the motion being
11 separately filed by the Debtor pursuant to Section 506(a) of the Bankruptcy Code and
12 Bankruptcy Rule 3012, that the secured claims of each of the Grid Secured Claim
13 (Class 4), LFT Secured Claim Class 5), JBJK Secured Claim (Class 6), Gilbert Trust
14 Secured Claim (Class 7), Trilliant Secured Claim (Class 8) and Other Secured Claims
15 Class 10) are all valued at zero dollars (\$0) (the ‘Lien Stripping Motion’).

16 Pursuant to the Plan, all Allowed Claims in Classes 1 (Priority Claims) and
17 Class 9 (Secured Tax Claims) will be paid in full in accordance with the Bankruptcy
18 Code. The Allowed Claim in Class 2 (Pre-Petition First Lien Claim) will be paid the
19 full amount of the principal amount of the underlying loan in accordance with the
20 terms and provisions of the Plan. NDJR as the holder of the Allowed Claim in Class
21 3 (Pre-Petition Second Lien Claim) will (depending on the results of the Marketing
22 Process) (i) receive New Common Stock in the Reorganized Debtor on account of all
23 of the Pre-Petition Second Lien Claim or a portion thereof that equals the Settled Pre-
24 Petition Second Lien Debt Amount and (ii) retain its Claim to the extent of the portion
25 of the Pre-Petition Second Lien Claim that equals the Non-Settled Pre-Petition
26 Second Lien Debt Amount subject to an extension of the maturity date to the fifth
27 (5th) anniversary of the Effective Date. Subject to the Court’s determination of the
28 Lien Stripping Motion, all Allowed Claims in Class 4 (Grid Secured Claim), 5 (LFT

1 Secured Claim), 6 (JBJK Secured Claim), 7 (Gilbert Trust Secured Claim), 8 (Trilliant
2 Secured Claim) and 10 (Other Secured Claims) are deemed Unsecured Claims and
3 will receive the treatment provided to Allowed General Unsecured Claims.

4 The holders of Allowed General Unsecured Claims in Class 11 will receive Pro
5 Rata distributions from the Creditors Account to be funded by the Reorganized Debtor
6 after the Effective Date during the Measuring Period from the Tax Benefit generated
7 during the Measuring Period in annual payments not to exceed in the aggregate the
8 lesser of (i) \$500,000 and (ii) twenty percent (20%) of the aggregate actual Tax
9 Benefit for the Measuring Period; provided, however, the amount of any annual
10 payment shall not exceed \$100,000 for any year during the Measuring Period. “**Tax**
11 **Benefit**” is defined in the Plan as “any reduction in any liability for income taxes of
12 the Reorganized Debtor and any subsidiaries for a taxable period beginning after
13 December 31, 2020 as a result of any net operating loss carry forward arising in a
14 taxable period ending on or before December 31, 2020 as reduced by any taxable
15 income recognized by the Reorganized Debtor or any subsidiaries to the extent
16 attributable to the Plan (the “**NOL**”).” Per the Plan, the Tax Benefit will be computed
17 “annually by comparing (i) the actual federal, state and local income tax liability of
18 the Reorganized Debtor for any taxable year during the Measuring Period in which it
19 is able to utilize any such NOL to reduce its taxable income, to (ii) the amount of such
20 income taxes that the Reorganized Debtor would have been required to pay with
21 respect to such taxable year in the absence of such NOL. For purposes of the preceding
22 sentence, any gross income recognized by the Reorganized Debtor as a result of any
23 debt discharged in connection with this Plan shall not be taken into account in
24 determining the Reorganized Debtor’s taxable income for the relevant taxable year
25 and, for the avoidance of doubt, any NOL utilized in the relevant taxable year shall
26 be deemed to be the last deduction taken into account in such taxable year.” As set
27 forth in the Plan, the “foregoing annual payments will be funded into the Creditors
28 Account within one hundred and twenty (120) days following the end of each taxable

1 period beginning after December 31, 2020 and will continue until the earlier of: (i)
2 the expiration of the applicable carryforward period of the NOL with respect to any
3 such taxable period; (ii) December 31, 2025; or (iii) the date the aggregate payments
4 funded into the Creditors Account is \$500,000 (the “**Measuring Period**”).”

5 As to Class 12 (Interests), holders of Interests in the Debtor will receiving
6 nothing on account of such Interests and such Interests will be cancelled.

7 Following the Effective Date of the Plan, the Debtor plans to continue to
8 operate its business in an effort to grow it beyond the current ‘proof of concept’ stage,
9 into revenue generating and ultimately profitability, and as such will be entitled to a
10 discharge pursuant to Bankruptcy Code section 1141(d)(1).

11 **C. Voting Instructions and Procedures**

12 **1. Voting Procedures, Ballots and Voting Deadline**

13 With respect to Classes of Claims and Interests that are Impaired under the
14 Plan, each holder of an Allowed Claim or Interest in such a Class will receive this
15 Disclosure Statement, the order approving the Disclosure Statement, the Plan, the
16 notice of the Confirmation Hearing and a Ballot for voting the acceptance or rejection
17 of the Plan (unless deemed to reject the Plan). Each Ballot is designated by Class
18 number and such designation will indicate to holders of Claim(s) and Interest(s) the
19 Class(es) in which they are entitled to vote.

20 Under the Plan, all holders of Claims or Interests in Classes 2 through 8 and
21 Classes 10 through 11 (the “**Voting Classes**”) are Impaired and entitled to vote on the
22 Plan. Holders of Claims in Classes 1 and 9 (the “**Non-Voting Classes**”) are
23 Unimpaired under the Plan and are deemed to have accepted the Plan. Accordingly,
24 holders of Claims in Classes 1 and 9 are not entitled to vote on the Plan. Holders of
25 Interests in Class 12 are not receiving or retaining any property under the Plan on
26 account of such Interests and, therefore are deemed to have rejected the Plan.
27 Accordingly, they will not be entitled to vote on the Plan.

Only persons who hold Claims or Interests on the Record Date (defined in the Plan and summarized below) are entitled to receive a copy of this Disclosure Statement. Only persons who hold Claims or Interests in the Voting Classes on the Record Date are entitled to vote on whether to accept or reject the Plan. Attached as Exhibit B hereto is a schedule of the various classes and their respective members.

6 PLEASE CAREFULLY FOLLOW THE DIRECTIONS CONTAINED ON
7 EACH ENCLOSED BALLOT. ALL VOTES TO ACCEPT OR TO REJECT THE
8 PLAN MUST BE CAST BY USING THE BALLOT ENCLOSED WITH THIS
9 DISCLOSURE STATEMENT. In order for a Ballot to be counted, it must be
10 completed, signed and sent to the Debtor (through its counsel) **so as to be received**
11 **by the Voting Deadline (4:00 p.m. Pacific Time on December 1, 2020)** at the
12 following address:

Sullivan Hill Rez & Engel
600 B Street, 17th Floor
San Diego, CA 92101
Attn: Laurel Dinkins
Email: dinkins@sullivanhill.com
Telephone: (619) 595-3258

If you are a holder of a Claim or Interest in a Voting Class and (i) did not receive a Ballot, (ii) received a damaged Ballot, (iii) lost your Ballot, (iv) have any question about balloting procedures, or (v) wish to obtain, at your own expense (unless otherwise specifically required by Bankruptcy Rule 3017(d)), an additional copy of the Plan or this Disclosure Statement, please contact:

Sullivan Hill Rez & Engel, APLC
600 B Street, 17th Floor
San Diego, CA 92101
Attn: Laurel Dinkins
Email: dinkins@sullivanhill.com
Telephone: (619) 595-3258

25 ONLY PROPERLY COMPLETED AND SIGNED BALLOTS RECEIVED
26 BY THE DEBTOR PRIOR TO THE VOTING DEADLINE WILL BE COUNTED
27 FOR PURPOSES OF DETERMINING WHETHER EACH VOTING CLASS HAS
28 ACCEPTED THE PLAN. ANY BALLOTS RECEIVED AFTER THE VOTING

1 DEADLINE WILL NOT BE COUNTED. BALLOTS MAY BE SENT BY
2 ELECTRONIC MAIL (BUT NOT FACSIMILE). The Debtor will prepare and file
3 with the Bankruptcy Court a certification of the results of the balloting with respect
4 to the Plan.

5 Your vote on the Plan is important. The Bankruptcy Code requires as a
6 condition to confirmation of a plan that each class that is impaired under such plan
7 vote to accept such plan, unless the “cram down” provisions of the Bankruptcy Code
8 are employed and satisfied. *See* Section VI.D.4, *infra* (“Cram Down”).

9

10 **2. Voting Record Date**

11 The record date for voting on the Plan is the date the Bankruptcy Court enters
12 an order approving this Disclosure Statement.

13 **3. Incomplete Ballots**

14 Any Ballot received that is not signed or does not indicate either an acceptance
15 or a rejection of the Plan shall be an invalid Ballot and shall not be counted for
16 purposes of determining acceptance or rejection of the Plan. Upon receipt of a
17 defective ballot, the Debtor will promptly notify the party submitting such ballot.

18 **4. Defects, Irregularities, Etc.**

19 Unless otherwise directed by the Bankruptcy Court, all questions as to the
20 validity, form, eligibility (including time of receipt), acceptance, and revocation or
21 withdrawal of Ballots will be determined by the Debtor in its sole discretion, whose
22 determination will be final and binding. Unless the Ballot being furnished is timely
23 filed by the Voting Deadline, together with any other documents required by such
24 Ballot, the Debtor may reject such Ballot as invalid and, therefore, decline to use it in
25 connection with seeking confirmation of the Plan by the Bankruptcy Court. In the
26 event of a dispute with respect to a Ballot, any vote to accept or reject the Plan cast
27 with respect to such Ballot will not be counted for purposes of determining whether
28 the Plan has been accepted or rejected, unless the Bankruptcy Court orders otherwise.

1 The Debtor reserves the right to reject any and all Ballots not in proper form. The
2 Debtor further reserves the right to waive any defects or irregularities or conditions
3 of delivery as to any particular Ballot. The interpretation (including the Ballot and the
4 respective instructions thereto) by the Debtor, unless otherwise directed by the
5 Bankruptcy Court, will be final and binding on all parties. Unless waived, any defects
6 or irregularities in connection with delivery of a Ballot must be cured within such
7 time as the Debtor (or the Bankruptcy Court) determines. Unless otherwise directed
8 by the Bankruptcy Court, delivery of such Ballots will not be deemed to have been
9 made until such irregularities have been cured or waived. Upon receipt of a defective
10 ballot, the Debtor will promptly notify the party submitting such ballot.

11 **5. Withdrawal of Ballot**

12 All properly completed, valid Ballots will be irrevocable upon the Voting
13 Deadline except as may be otherwise ordered by the Bankruptcy Court. Prior to the
14 Voting Deadline, any holder of a Claim or Interest who has delivered a valid Ballot
15 may withdraw its vote by delivering a written notice of withdrawal to the Debtor so
16 as to be received by the Debtor's counsel at the address specified above before the
17 Voting Deadline. To be valid, the notice of withdrawal must (a) describe the Claim
18 and/or Interest to which it relates, (b) be signed by the party who signed the Ballot to
19 be revoked, and (c) be received by the Debtor's counsel by the Voting Deadline.
20 Withdrawal of a Ballot can only be accomplished pursuant to the foregoing procedure.
21 Prior to the Voting Deadline, any holder of a Claim and/or Interest who has delivered
22 a valid Ballot may change its vote by delivering to the Debtor (through its counsel at
23 the address above) a properly completed substitute Ballot so as to be received before
24 the Voting Deadline. In the case where more than one timely, properly completed
25 Ballot for the same Claim(s) and/or Interest(s) (as applicable) is received by the
26 Voting Deadline, only the Ballot that bears the latest date will be counted. After the
27 Voting Deadline, a vote of the holder of a Claim may only be changed or withdrawn
28

with the authorization of the Bankruptcy Court upon a showing of “cause” pursuant to Bankruptcy Rule 3018(a).

D. Confirmation Hearing

The Bankruptcy Court will hold a hearing on confirmation of the Plan (the “Confirmation Hearing”) commencing at 9:00 a.m. Pacific time on December 15, 2020, before the Honorable Laura S. Taylor, United States Bankruptcy Judge for the Southern District of California, 325 West F Street, Courtroom 129 (Dept. 3), San Diego, CA 92101, subject to further order of the Bankruptcy Court. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice, except for an announcement of the adjourned date made at the Confirmation Hearing. At the Confirmation Hearing, the Bankruptcy Court will (i) determine whether the requisite votes have been obtained for each of the Voting Classes, (ii) hear and determine objections, if any, to the Plan and to confirmation of the Plan that have not been previously disposed of, (iii) determine whether the Plan meets the confirmation requirements of the Bankruptcy Code, and (iv) determine whether to confirm the Plan.

17 Any objection to confirmation of the Plan must be made in writing and must
18 specify in detail the name and address of the objector, all grounds for the objection
19 and the amount of the Claim held by the objector. Any such objections must be filed
20 and served upon the persons designated in the notice of the Confirmation Hearing, in
21 the manner and by the deadline described therein.

II. CERTAIN EVENTS PRECEDING THE DEBTOR'S CHAPTER 11 FILING

A. The Debtor's Business

The Debtor is a Delaware corporation formed in 2008 (originally under the name On-Ramp Wireless, Inc.). The Debtor maintained its principal place of business in San Diego, California. The Debtor was formed to develop telecommunication networks between utility meters (water and electric) and the utilities' corporate

1 headquarters. Its innovative technology, built on Internet of Things connectivity,
2 allows customers monitoring capabilities to better serve their communities. At its high
3 point, the Debtor operated 38 networks in the United States, Latin America, Europe,
4 and Asia; it employed approximately 150 people; and it generated approximately
5 \$8,000,000 in annual revenue.

6 Although the Debtor's business grew, it never did achieve consistent
7 profitability sufficient to cover the costs associated with its operations and growth,
8 and the Debtor remained dependent on continued financing from its investors.
9 Beginning with its inception, the Debtor underwent several rounds of funding,
10 pursuant to which it issued its investors common and preferred stock and convertible
11 and other promissory notes. The Debtor initially raised several million dollars from
12 its investors. In addition, in 2011, the Debtor obtained a business loan, including credit
13 cards and letters of credit, from Silicon Valley Bank ("SVB") in an amount at the time
14 not to exceed \$1 million.

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17 **B. The Debtor's Bankruptcy Filing**

18 The Debtor's financial difficulties were compounded in or around 2015, when
19 the Debtor undertook misguided efforts to move beyond its core business and expand
20 into "machine-to-machine" communication. The Debtor developed the network
21 capacity to provide this type of communication, but was unable to attract customers
22 for it—despite debt and equity holders having invested more than \$150,000,000. The
23 Debtor ultimately ran out of funding in late 2017 and early 2018, and its business
24 essentially collapsed.

25 In addition, several parties have commenced litigation against the Debtor, and
26 the litigation in a few cases has led to a judgment or default judgment against the
27 Debtor. Faced with a mounting number of lawsuits, lack of liquidity and disinclination
28 on the part of investors to extend further credit, the Debtor had no alternative but to

1 seek bankruptcy protection. Accordingly, the Debtor filed for bankruptcy relief on the
2 Petition Date.

3 At present, the Debtor is essentially a startup once again. Its operations are
4 currently limited to three small networks that are in the ‘proof of concept’ stage and
5 generate modest amounts from customers. The Debtor also licenses its technology,
6 although some of the licensees have been terminated recently for nonpayment of the
7 fees owed to the Debtor. Year-to-date revenue is less than \$100,000 and the Debtor
8 remains dependent on financing. These minimal operations are performed by two full-
9 time independent contractors, as well as six part-time independent contractors
10 (previously the Debtor’s engineers) who are used on an “as-needed” basis.

11 **C. Summary of Prepetition Secured Indebtedness**

12 **(a) SVB:**

13 On or about September 21, 2011, the Debtor and SVB entered into that certain
14 Loan and Security Agreement, pursuant to which SVB extended credit and other
15 financial accommodations to the Debtor and the Debtor granted SVB security interest
16 in its assets in accordance therewith. Pursuant to the loan agreement, the Debtor
17 granted SVB a security interest in all of the Debtor’s assets other than intellectual
18 property except that the collateral included proceeds of the intellectual property.
19 SVB’s interest was acquired by Lakefront Associates, LLC (“**Lakefront**”) prior to
20 the Petition Date. Lakefront is an affiliate of NDJR (discussed below). Lakefront’s
21 lien is in first priority, senior to all other prepetition liens against the Debtor.

22 **(b) NDJR:**

23 NDJR is one of the largest secured creditors of the Debtor, whose lien is junior
24 only to Lakefront’s lien. The Debtor’s indebtedness owed to NDJR is owed pursuant
25 to a certain Secured Senior Subordinated Convertible Promissory Note dated June 27,
26 2017 (the “**NDJR Note**”). The aggregate principal amount outstanding under the
27 NDJR Note is over \$16 million. NDJR holds a lien and security interest in all of the
28 Debtor’s assets.

1 (c) **Grid, LFT, & JBJK:**

2 The Debtor is indebted to Grid Partners IIIA, L.P. (“**Grid**”), LFT Capital, LLC
3 (“**LFT**”) and JBJK Investments, LP (“**JBJK**”) in the approximate amount of \$17.9
4 million, \$3.8 million and \$2.3 million, respectively, pursuant to Subordinated Secured
5 Convertible Notes issued by the Debtor. NDJR, Grid, LFT and JBJK are parties to
6 an Intercreditor and Subordination Agreement they entered into on June 27, 2017 to
7 govern the respective rights, interests, obligations priority and positions of those
8 parties with respect to the assets and properties of the Debtor. Grid is an entity
9 controlled by Babak Razi, a former insider and CEO of the Debtor.

10 (d) **Gilbert Trust:**

11 The Debtor is indebted to John S. Gilbert and Barbara J. Gilbert, trustees of the
12 Gilbert Family Trust, dated March 1, 1993 (the “**Gilbert Trust**”) in the approximate
13 amount of \$1.2 million pursuant to a promissory note issued by the Debtor.

14 (e) **Trilliant:**

15 Trilliant Networks (Canada) Inc. (“**Trilliant**”) contends that it is owed
16 approximately \$2.8 million pursuant to promissory notes issued by the Debtor, which
17 amount the Debtor contends is subject to setoff based on Trilliant’s failure to complete
18 additional contractual notes, purchases, and damages caused to the Debtor’s business
19 by Trilliant breaching the Trillian Contract. Trilliant disputes such alleged set off
20 claim.

21 **III. EVENTS DURING THE CHAPTER 11 CASE**

22 No request for the appointment of a trustee or examiner has been made in this
23 Chapter 11 Case. The following is a brief description of some of the major events
24 during the Chapter 11 Case:

25 **A. DIP Financing**

26 On July 28, 2020, the Debtor filed a motion seeking Court approval to obtain
27 from NDJR in its capacity as the DIP Lender postpetition financing in the amount of
28 \$400,000, to grant the DIP Lender a “priming lien” in all of the Debtor assets, and

1 related relief. Given the Debtor's total lack of liquidity, this loan was necessary to
2 finance the Debtor's continued operations throughout the case, as well as the costs of
3 administration. On July 31, 2020, the Court entered an order approving the financing
4 on an interim basis. On August 20, 2020, the Court entered a final order approving
5 the financing on a final basis.

6 **B. Retention of Counsel**

7 On July 31, 2020, the Debtor filed an application to employ Sullivan Hill Rez
8 & Engel, APLC as its general bankruptcy counsel. On August 21, 2020, the Court
9 entered an order approving the application.

10 On August 18, 2020, the Debtor filed an application to employ Shustak
11 Reynolds & Partners, P.C. as its special intellectual property counsel. On September
12 9, 2020, the Court entered an order approving the application.

13 **C. Retention of Sherwood and Marketing Process**

14 On August 11, 2020, the Debtor filed a motion to approve a process
15 ("Marketing Process") for the Debtor's assets, as well as the retention of Sherwood
16 Partners, Inc. to run the Marketing Process. The motion is currently set for hearing on
17 September 24, 2020.

18 **D. Claims Bar Date**

19 On July 29, 2020, the Bankruptcy Court entered on the docket and served on
20 all creditors and parties in interest a Notice of Chapter 11 Case which, among other
21 things, set the general claims bar date for October 5, 2020 and the governmental
22 claims bar date for January 25, 2021.

23 **IV. SUMMARY OF THE PLAN**

24 **A. Introduction**

25 Set forth in this Article is a description of the basic terms of the Plan. This
26 description is not intended, nor should it be relied upon, as a substitute for a careful
27 review of the actual terms of the Plan, a complete copy of which is attached hereto as
28 Exhibit A.

1 **B. Classification of Claims and Interests**

2 Section 1122 of the Bankruptcy Code provides that, except for certain claims
3 classified for administrative convenience, a plan may place a claim or interest in a
4 particular class only if such claim or interest is substantially similar to the other claims
5 or interests of such class. The Bankruptcy Code also requires that a plan provide the
6 same treatment for each claim of a particular class unless the holder of a particular
7 claim agrees to a less favorable treatment of its claim. The Debtor believes that the
8 Plan complies with this standard. The Plan divides Claims against and Interests in the
9 Debtor into the following Classes:

10 **Class 1 (Priority Non-Tax Claims)** shall consist of all Priority Non-Tax
11 Claims.

12 **Class 2 (Pre-Petition First Lien Claim)** shall consist of the Claim of the Pre-
13 Petition First Lien Lender under its Pre-Petition Senior Loan Documents.

14 **Class 3 (Pre-Petition Second Lien Claim)** shall consist of the Claim of the
15 Pre-Petition Second Lien Lender under its Pre-Petition Senior Loan Documents.

16 **Class 4 (Grid Secured Claim)** shall consist of the Grid Secured Claim, i.e.,
17 the Claim of Grid under the Grid Subordinated Secured Notes.

18 **Class 5 (LFT Secured Claim)** shall consist of the Claim of the LFT Secured
19 Claim, i.e., the LFT under the LFT Subordinated Secured Notes.

20 **Class 6 (JBJK Secured Claim)** shall consist of the JBJK Secured Claim, i.e.,
21 the Claim of JBJK under the JBJK Subordinated Secured Notes.

22 **Class 7 (Gilbert Trust Secured Claim)** shall consist of the Claim of the
23 Gilbert Trust Secured Claim, i.e., the Gilbert Trust under the Gilbert Trust
24 Subordinated Secured Note.

25 **Class 8 (Trilliant Secured Claim)** shall consist of the Trilliant Secured Claim,
26 i.e., the Claim of Trilliant under the Trilliant Subordinated Secured Notes.

27 **Class 9 (Secured Tax Claims)** shall consist of all Secured Tax Claims.

28 **Class 10 (Other Secured Claims)** shall consist of all Other Secured Claims.

1 **Class 11 (General Unsecured Claims)** shall consist of all General Unsecured
2 Claims against the Debtor.

3 **Class 12 (Interests)** shall consist of all Interests in the Debtor.

4 For a listing of claimants by class, see Exhibit B hereto.

5 For a description of the treatment of the Claims and Interests under the Plan,
6 see Article V of the Plan, "Treatment of Claims and Interests."

7 A Claim or Interest is classified in a particular Class only to the extent that the
8 Claim or Interest qualifies within the description of that Class and is classified in other
9 Classes to the extent that any remainder of the Claim or Interest qualifies within the
10 description of such other Classes. A Claim or Interest is also classified in a particular
11 Class for the purpose of receiving distributions pursuant to the Plan only to the extent
12 that such Claim or Interest is a Claim or Interest in that Class and has not been paid
13 in full, released or otherwise satisfied prior to the Effective Date.

14 **C. Treatment of Claims and Interests and Summary of Distributions
15 under the Plan**

16 The Confirmation Order shall provide for the vesting of the Debtor's assets in
17 the Reorganized Debtor. Pursuant to the terms of the Plan, the Reorganized Debtor,
18 either itself or through a Disbursing Agent, will, among other things, calculate and
19 pay all distributions required or permitted under the Plan.

20 **1. Administrative Claims**

21 **a. Allowed Administrative Expense Claims**

22 Subject to the provisions contained in Section 2.2 of the Plan, unless otherwise
23 agreed in writing by the Reorganized Debtor and the holder of an Allowed
24 Administrative Expense Claim, the Disbursing Agent shall pay to each holder of an
25 Allowed Administrative Expense Claim an amount equal to its Allowed
26 Administrative Expense Claim on the latest of (a) the Effective Date or as soon
27 thereafter as is practicable, (b) for Ordinary Course Administrative Expense Claims,
28 when such Claims are due and payable in the ordinary course of the Debtor's business,

1 (c) thirty (30) days after the date on which such Administrative Expense Claim
2 becomes an Allowed Administrative Expense Claim by the entry of a Final Order,
3 and (d) the date the Reorganized Debtor is otherwise obligated to pay such
4 Administrative Expense Claim in accordance with the terms and provisions of the
5 particular transactions giving rise to such Claim, the terms and provisions of the Plan
6 and any orders of the Bankruptcy Court relating thereto.

7 **b. Requests for Allowance of Administrative Expense
8 Claims**

9 Except as expressly set forth to the contrary in the Plan, each Person, including
10 each Professional, shall file an application for an allowance of an Administrative
11 Expense Claim in conformity with the following Subsections:

12 **(1) Professionals.** All Professionals shall file a final
13 application for the allowance of a Professional Fee Claim on or before forty (40) days
14 following the Effective Date. Objections to any Professional Fee Claim must be filed
15 and served on the Reorganized Debtor, counsel for the Committee, the UST and the
16 requesting Professional no later than twenty (20) days after the filing of the applicable
17 application for allowance of the Professional Fee Claim.

18 **(2) Other Administrative Expense Claimants.** All
19 holders of Administrative Expense Claims other than Professionals shall file a request
20 for payment of an Administrative Expense Claim with the Bankruptcy Court on or
21 before forty (40) days following the Effective Date. Holders of Administrative
22 Expense Claims, including such Persons asserting a Claim under § 503(b)(9) of the
23 Bankruptcy Code, who do not file a request for payment by such deadline shall be
24 forever barred from asserting such Claims against the Debtor, the Reorganized Debtor
25 or their respective property and assets (whether cash or otherwise). Notwithstanding
26 the foregoing, holders of Ordinary Course Administrative Expense Claims do not
27 need to file with the Bankruptcy Court a request for payment of an Administrative
28 Expense Claim, but rather may be paid in the ordinary course.

1 **2. Allowed Priority Tax Claims**

2 Pursuant to § 1129(a)(9)(C) of the Bankruptcy Code, unless otherwise agreed
3 in writing by the holder of a Priority Tax Claim and the Reorganized Debtor, each
4 holder of an Allowed Priority Tax Claim shall be paid a value, as of the Effective
5 Date, equal to the unpaid portion of such Allowed Priority Tax Claim in equal
6 quarterly cash payments beginning on the final day of the first full quarter after the
7 Effective Date and ending five years after the Petition Date.

8 **a. Other Provisions Concerning Treatment of Priority Tax
9 Claims**

10 Notwithstanding the provisions of Section 2.3 of the Plan, the holder of an
11 Allowed Priority Tax Claim will not be entitled to receive any payment on account of
12 any penalty arising with respect to or in connection with the Allowed Priority Tax
13 Claim, except as Allowed under § 507(a)(8)(G) of the Bankruptcy Code. Other than
14 as Allowed under § 507(a)(8)(G) of the Bankruptcy Code, any such Claim or demand
15 for any such penalty (i) will be subject to treatment in Class 12 pursuant to § 726(a)(4)
16 of the Bankruptcy Code and (ii) the holder of an Allowed Priority Tax Claim will not
17 assess or attempt to collect such penalty from the Reorganized Debtor or its property.

18 **3. DIP Facility Claims**

19 The DIP Facility Claims shall be deemed to be an Allowed Claim including all
20 principal, accrued and accruing postpetition interest, costs, fees and expenses. In full
21 and final satisfaction, settlement, release, and discharge of the Allowed DIP Facility
22 Claims, and except to the extent the DIP Lender agrees to a less favorable treatment,
23 on the Effective Date or as soon as reasonably practicable thereafter, the DIP Facility
24 Claims shall be paid full in Cash by the Reorganized Debtor with proceeds from the
25 Exit Facility.

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27 **4. Summary of Classification and Treatment of Holders of
28 Allowed Claims and Interests that are Placed in Classes**

1 The following table sets forth a brief summary of the classification and
 2 treatment of Claims and Interests and the estimated distributions to the holders of
 3 Allowed Claims that are placed in Classes under the Plan. The information set forth
 4 in the tables is for convenience of reference only. Each holder of a Claim or Interest
 5 should refer to Article V of the Plan, "Treatment of Classes of Claims and Interests,"
 6 for a full understanding of the classification and treatment of Claims and Interests
 7 provided under the Plan. The estimated amounts of the Claims reflected below are as
 8 of the Petition Date, and do not include Claims which are contingent, disputed or
 9 unliquidated.

10 In addition to having senior lien priority over that of Grid, Gilbert Trust and
 11 Trilliant based on filing a UCC-1 financing statement prior to those filed by such
 12 parties, NDJR obtained lien priority over Grid, LFT, and JBJK by virtue of an
 13 Intercreditor and Subordination Agreement entered into by those parties on June 27,
 14 2017.

DESCRIPTION AND AMOUNT OF CLAIMS	TREATMENT
Class 1 (Priority Non-Tax Claims): Consists of all Priority Non-Tax Claims. Estimated Aggregate Claims Amount: \$0	Unimpaired. Unless otherwise agreed in writing by the Reorganized Debtor and the holder of an Allowed Priority Non-Tax Claim, each holder of an Allowed Priority Non-Tax Claim will receive an amount equal to its Allowed Priority Non-Tax Claim on the latest of (a) the Effective Date or as soon thereafter as is practicable, (b) 30 days after the date on which such Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim by the entry of a Final Order, and (c) the date the Reorganized Debtor is

DESCRIPTION AND AMOUNT OF CLAIMS	TREATMENT
	otherwise obligated to pay such Allowed Priority Non-Tax Claim in accordance with the terms and provisions of the particular transactions giving rise to such Claim, the terms and provisions of the Plan and any orders of the Bankruptcy Court relating thereto.
Class 2 (Pre-Petition First Lien Claim): Consists of the Pre-Petition First Lien Claim. Estimated Claim Amount: \$86,366.69 (plus accrued interest and costs and fees owed)	Impaired. On the Effective Date or as soon thereafter as is practicable, the holder of the Allowed Pre-Petition First Lien Claim shall receive the following treatment: the amount of the Allowed Pre-Petition First Lien Claim shall be reduced to the principal amount portion of the Pre-Petition First Lien Claim in the amount equal to \$86,366.69 on account of outstanding obligations as of the Petition Date. The Reorganized Debtor shall pay such amount in Cash to the Pre-Petition First Lien Lender from the proceeds of the Exit Facility, with any balance of such Claim on account of the amount of all other Obligations under, and as defined in, the Pre-Petition First Lien Loan Agreement including, without limitation, accrued and unpaid interest at the contract rate set forth in the Pre-Petition First Lien Loan Agreement through and including the Effective Date and

DESCRIPTION AND AMOUNT OF CLAIMS	TREATMENT
	the reasonable fees and expenses of counsel for the Pre-Petition First Lien Lender, to be discharged.
Class 3 (Pre-Petition Second Lien Claim) Consists of the Pre-Petition Second Lien Claim. Estimated Claim Amount: \$16,273,098.82 (plus any accrued interest and costs and fees owed)	Impaired. On the Effective Date, the holder of the Allowed Pre-Petition Second Lien Claim shall receive the following treatment: (i) the portion of the Pre-Petition Second Lien Claim equal to the Settled Pre-Petition Second Lien Debt Amount shall be fully and finally satisfied, settled, released and discharged through the receipt by the Pre-Petition Second Lien Lender of the New Common Stock in the Reorganized Debtor pursuant to the Debt-For-Equity Exchange as provided for in the Plan, and (ii) with respect to the Non-Settled Pre-Petition Second Lien Debt Amount, the holder of the Pre-Petition Second Lien Claim shall retain such Claim to the extent of such amount and the Reorganized Debtor shall continue to be liable for such Claim to the extent of the Non-Settled Pre-Petition Second Lien Debt Amount in accordance with the Pre-Petition Senior Loan Documents governing the Pre-Petition Second Lien Claim (as may be modified by the holder of the Pre-Petition Second Lien Claim and the

1 2 DESCRIPTION AND AMOUNT OF CLAIMS	TREATMENT
	<p>3 Reorganized Debtor), subject to the following: 4 (i) the maturity date for the repayment of the 5 Non-Settled Pre-Petition Second Lien Debt 6 Amount shall be the fifth (5th) anniversary of 7 the Effective Date; (ii) interest shall accrue on 8 the principal amount of such Claim at the non- 9 default rate of six and a half percent (6.5%) per 10 annum which interest, rather than being paid in 11 Cash, may be (at the option of the Reorganized 12 Debtor) capitalized and added to the principal 13 amount of the Claim; (iii) the holder of the Pre- 14 Petition Second Lien Claim shall retain its Liens 15 securing such Claims to the extent of the Non- 16 Settled Pre-Petition Second Lien Debt Amount; 17 and (iv) any defaults that existed with respect to 18 such Claim as of the Petition Date shall be 19 deemed cured.</p>

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DESCRIPTION AND AMOUNT OF CLAIMS	TREATMENT
<p>3 Class 4 (Grid Secured Claim):</p> <p>4 Consists of the Grid Secured</p> <p>5 Claim.</p> <p>6 Estimated Claim Amount:</p> <p>7 \$17,879,194.64</p>	<p>Impaired. Subject to the Court's determination of the Lien Stripping Motion, the Class 4 Grid Secured Claim shall be deemed to be an Unsecured Claim and shall be treated as a Class 11 General Unsecured Claim, in which case the holder of such Claim shall receive in full and final satisfaction, settlement, release, and discharge of such Claim the treatment of a Class 11 General Unsecured Claim.</p>
<p>12 Class 5 (LFT Secured Claim):</p> <p>13 Consists of the LFT Secured</p> <p>14 Claim.</p> <p>15 Estimated Claim Amount:</p> <p>16 \$2,301,046.58</p>	<p>Impaired. Subject to the Court's determination of the Lien Stripping Motion, the Class 5 LFT Secured Claim shall be deemed to be an Unsecured Claim and shall be treated as a Class 11 General Unsecured Claim, in which case the holder of such Claim shall receive in full and final satisfaction, settlement, release, and discharge of such Claim the treatment of a Class 11 General Unsecured Claim.</p>

DESCRIPTION AND AMOUNT OF CLAIMS	TREATMENT
<p>3 Class 6 (JBJK Secured Claim): 4 Consists of the JBJK Secured 5 Claim. 6 Estimated Claim Amount: 7 \$3,769,777.40</p>	<p>Impaired. Subject to the Court's determination of the Lien Stripping Motion, the Class 6 JBJK Secured Claim shall be deemed to be an Unsecured Claim and shall be treated as a Class 11 General Unsecured Claim, in which case the holder of such Claim shall receive in full and final satisfaction, settlement, release, and discharge of such Claim the treatment of a Class 11 General Unsecured Claim.</p>
<p>12 Class 7 (Gilbert Trust Secured 13 Claim): Consists of the Gilbert 14 Trust Secured Claim. 15 Estimated Claim Amount: 16 \$1,153,424.66</p>	<p>Impaired. Subject to the Court's determination of the Lien Stripping Motion, the Class 7 Gilbert Trust Secured Claim shall be deemed to be an Unsecured Claim and shall be treated as a Class 11 General Unsecured Claim, in which case the holder of such Claim shall receive in full and final satisfaction, settlement, release, and discharge of such Claim the treatment of a Class 11 General Unsecured Claim.</p>

DESCRIPTION AND AMOUNT OF CLAIMS	TREATMENT
<p>Class 8 (Trilliant Secured Claim): Consists of the Trilliant Secured Claim.</p> <p>Estimated Claim Amount: \$2,736,376.71 (subject to potential setoff)</p>	Impaired. Subject to the Court's determination of the Lien Stripping Motion, the Class 8 Trilliant Secured Claim shall be deemed to be an Unsecured Claim and shall be treated as a Class 11 General Unsecured Claim, in which case the holder of such Claim shall receive in full and final satisfaction, settlement, release, and discharge of such Claim the treatment of a Class 11 General Unsecured Claim.
<p>Class 9 (Secured Tax Claims):</p> <p>Consists of the Secured Tax Claims.</p> <p>Estimated Aggregate Claims Amount: \$258,488.09</p>	Unimpaired. Pursuant to § 1129(a)(9)(D) of the Bankruptcy Code, each holder of an Allowed Class 9 Secured Tax Claim shall retain the Lien securing its Allowed Secured Tax Claim and shall be paid a value as of the Effective Date equal to the unpaid portion of such Allowed Secured Tax Claim in quarterly Cash payments beginning on the final day of the first full quarter after the Effective Date and ending five years after the Petition Date.

DESCRIPTION AND AMOUNT OF CLAIMS	TREATMENT
Class 10 (Other Secured Claims): Consists of the Other Secured Claims. Estimated Aggregate Claims Amount: \$250,934.91	Impaired. Subject to the Court's determination of the Lien Stripping Motion, each Class 10 Other Secured Claim shall be deemed to be an Unsecured Claim and shall be treated as a Class 11 General Unsecured Claim, in which case the holder of such Claim shall receive in full and final satisfaction, settlement, release, and discharge of such Claim the treatment of a Class 11 General Unsecured Claim.

DESCRIPTION AND AMOUNT OF CLAIMS	TREATMENT
Class 11 (General Unsecured Claims): Consists of the General Unsecured Claims. Estimated Aggregate Claims Amount: \$9,213,525.49	Impaired. Each holder of an Allowed Class 11 General Unsecured Claim shall receive, on account of such Allow Claim, distributions from the Creditors Account on a Pro Rata basis. In the event that the Debtor does not achieve profitability within the five-year Measuring Period, then no Tax Benefit will be realized by the Debtor; the Debtor will have no obligation to fund the Creditors Account; and holders of Class 11 claims will receive no distributions under the Plan. No interest, penalty, or late charge is to be allowed on any Claim for the purpose of computing the distributions to the holders of Allowed General Unsecured Claims. For each year during the Measuring period, the Debtor will either (i) make distributions required under the Plan, or (ii) if no distributions are required under the Plan, provide notice of that fact to all holder of Claims in Class 11 who file in the Chapter 11 Case and serve on the Debtor or the Reorganized Debtor, as applicable, a request for notice, no later than December 31 of the following year.

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DESCRIPTION AND AMOUNT OF CLAIMS	TREATMENT
Class 12 (Interests): Consists of all Interests in the Debtor.	Impaired. Holders of Class 12 Interests shall receive nothing on account of and in exchange for such Interests.

D. Means for Execution of the Plan

1. Continued Corporate Existence and Vesting of Assets in the Reorganized Debtor

As of the Effective Date, the Reorganized Debtor shall exist as a corporate entity in accordance with applicable law pursuant to its Amended Certificate of Incorporation and Bylaws. Except as otherwise provided in the Plan, on and after the Effective Date, all Property of the Estate, including all claims, rights and Causes of Action, shall vest in the Reorganized Debtor free and clear of all Claims, Liens, charges, other encumbrances, and Interests. On and after the Effective Date, the Reorganized Debtor may operate its business and may use, acquire, and dispose of Property and compromise or settle any Claims without supervision of or approval of the Bankruptcy Court free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, other than restrictions expressly imposed by the Plan or the Confirmation Order. Without limiting the foregoing, the Reorganized Debtor may pay the charges that it incurs on or after the Effective Date for professional fees, disbursements, expenses or related support services without application to the Bankruptcy Court.

Following the Effective Date of the Plan, the Debtor plans to continue to operate its business in an effort to grow it beyond the current ‘proof of concept’ stage,

1 into revenue generating and ultimately profitability, and as such will be entitled to a
2 discharge pursuant to Bankruptcy Code section 1141(d)(1).

3 **2. Corporate Action**

4 Each of the matters provided for under the Plan involving the corporate
5 structure of the Debtor or corporate action to be taken by or required of the Debtor,
6 shall, as of the Effective Date, be deemed to have occurred and be effective as
7 provided herein, and shall be authorized, approved and, to the extent taken prior to
8 the Effective Date, ratified in all respects without any requirement of further action
9 by shareholders, creditors, officers or directors of the Debtor or the Reorganized
10 Debtor.

11 **3. Certificate of Incorporation and Bylaws**

12 On the Effective Date or as soon thereafter as is practicable, the Reorganized
13 Debtor shall file with the Secretary of State of the State of Delaware, in accordance
14 with the Delaware General Corporation Law, the Amended Certificate of
15 Incorporation and Bylaws. The Amended Certificate of Incorporation and Bylaws
16 shall become the Amended Certificate of Incorporation and Bylaws of the
17 Reorganized Debtor. The Amended Certificate of Incorporation and Bylaws for the
18 Reorganized Debtor shall be included in the Plan Supplement.

19 **4. Release of Liens**

20 Except as otherwise provided in the Plan or in any contract, instrument, release
21 or other agreement or document entered into or delivered in connection with the Plan,
22 on the Effective Date and upon payment as provided in the Plan, all mortgages, deeds
23 of trust, Liens or other security interests against the property of the Estate vesting in
24 the Reorganized Debtor will be fully released and discharged. The Reorganized
25 Debtor shall be authorized to file or record on behalf of creditors such Uniform
26 Commercial Code termination statements, real property releases or reconveyances, or
27 other documents or instruments as may be necessary to implement the provisions of
28 Section 6.4 of the Plan. For the avoidance of doubt, the Pre-Petition Second Lien

1 Claim to the extent of the Non-Settled Pre-Petition Second Lien Debt Amount are not
2 released under the Plan.

3 **5. Cancellation of Interests and Authorization and Issuance of**
4 **New Stock**

5 **a.** On or as soon as reasonably practicable after the Effective
6 Date, the Reorganized Debtor shall issue the New Common Stock to be distributed to
7 NDJR pursuant to the Plan without any further act or action by any other party under
8 applicable law, regulation, order or rule. The issuance of the New Common Stock
9 and the distribution thereof under the Plan shall be exempt from registration under the
10 Securities Act, the Bankruptcy Code and applicable state securities laws. All
11 documents, agreements and instruments entered into, on or as of the Effective Date
12 contemplated by or in furtherance of the Plan, including the Exit Financing
13 Agreement and any other agreement entered into in connection with the foregoing,
14 shall become effective and binding in accordance with their respective terms and
15 conditions upon the parties thereto.

16 **b.** All of the shares of New Common Stock issued pursuant to
17 the Plan shall be duly authorized, validly issued, and if applicable, fully paid and non-
18 assessable.

19 **6. The Exit Facility**

20 **a.** On the Effective Date and simultaneously with the vesting
21 of the Debtor's assets in the Reorganized Debtor, the Reorganized Debtor shall enter
22 into the Exit Financing Agreement with the Exit Facility Lender and any related
23 documents required by the Exit Facility Lender. Confirmation of the Plan shall be
24 deemed to constitute approval of the Exit Facility and the Exit Facility documents
25 and, subject to the occurrence of the Effective Date, authorization for the Reorganized
26 Debtor to enter into and perform its obligations in connection with the Exit Facility
27 without the need for any further action.

1 b. The main terms of the Exit Facility shall be as of the
2 Effective Date as follows:

- 3 i. A multiple draw term loan in the principal amount of the
4 Exit Facility Amount.
- 5 ii. The maturity date of the Exit Facility shall be the fifth
6 (5th) anniversary of the Effective Date.
- 7 iii. The non-default interest rate shall be five percent (5%)
8 per annum, and the default rate shall accrue upon the
9 occurrence of an event of default thereunder at the rate
10 of seven percent (7%) per annum.
- 11 iv. The Exit Facility shall be secured by first priority Liens
12 on, and security interests in, all of the Reorganized
13 Debtor's right, title and interest, both legal and
14 equitable, in real and personal property, tangible and
15 intangible, wherever located and however acquired,
16 subject to the terms of the Exit Facility documents.

17 c. On the Effective Date, the Exit Facility documents shall
18 constitute legal, valid, binding, and authorized obligations of the Reorganized Debtor
19 and the non-Debtor parties to the Exit Facility documents, enforceable in accordance
20 with their terms. Pursuant to the Plan, the financial accommodations to be extended
21 pursuant to the Exit Facility documents are being extended, and shall be deemed to
22 have been extended, in good faith, for legitimate business purposes, are reasonable,
23 shall not be subject to avoidance, recharacterization, or subordination (including
24 equitable subordination) for any purposes whatsoever, and shall not constitute
25 preferential transfers, fraudulent conveyances, or other voidable transfers under the
26 Bankruptcy Code or any other applicable non-bankruptcy law.

27 d. The Liens securing the Reorganized Debtor's obligations
28 under the Exit Facility shall constitute first priority perfected liens and security

1 interests on all of the tangible, real and personal, assets of Reorganized Debtor to the
2 extent provided in the Exit Facility documents (subject to only the Liens securing the
3 Non-Settled Pre-Petition Second Lien Debt Amount). On the Effective Date, all of
4 the Liens securing the Exit Facility (1) shall be legal, binding, and enforceable Liens
5 on, and security interests in, the collateral granted thereunder in accordance with the
6 terms of the Exit Facility documents, (2) shall be deemed automatically perfected on
7 the Effective Date, and (3) shall not be subject to avoidance, recharacterization, or
8 subordination (including equitable subordination) for any purposes whatsoever and
9 shall not constitute preferential transfers, fraudulent conveyances, or other voidable
10 transfers under the Bankruptcy Code or any applicable non-bankruptcy law.

11 e. The Reorganized Debtor and the entities granted such Liens
12 and security interests are authorized to make all filings and recordings, and to obtain
13 all governmental approvals and consents necessary to establish and perfect such Liens
14 and security interests under the provisions of the applicable state, provincial, federal,
15 or other law (whether domestic or foreign) that would be applicable in the absence of
16 the Plan and the Confirmation Order (it being understood that perfection shall occur
17 automatically by virtue of the entry of the Confirmation Order, and any such filings,
18 recordings, approvals, and consents shall not be required), and will thereafter
19 cooperate to make all other filings and recordings that otherwise would be necessary
20 under applicable law to give notice of such Liens and security interests to third parties.

21 **7. Provisions Relating to Post-Confirmation Administration of
22 the Reorganized Debtor**

23 a. **Board of Directors.** As of the Effective Date, the Board of
24 Directors shall be the governing body of the Reorganized Debtor until such time as a
25 shareholders' meeting occurs pursuant to the Organizational Documents or applicable
26 non-bankruptcy law, and shall assume the governance of the Reorganized Debtor
27 including, but not limited to, determining who shall serve as the Reorganized Debtor's
28 Officers, supervisors, managers and executive employees.

b. Identity of Board of Directors. On the Effective Date, the term of the current members of the board of directors of the Debtor, if any, will expire. The identity of the initial members of the Board of Directors shall be included in the Plan Supplement.

c. Other Provisions. Other provisions governing the service, term and continuance in office of the members of the Board of Directors shall be set forth in the Organizational Documents of the Reorganized Debtor.

8. Disbursing Agent

On the Effective Date, the Reorganized Debtor shall have the authority to serve as, or appoint, the Disbursing Agent to carry out the duties set forth in the Plan. The Reorganized Debtor shall have the authority to replace the Disbursing Agent at any time, with or without cause, subject to the terms of any agreement between the Reorganized Debtor and the Disbursing Agent. The Reorganized Debtor shall file any agreement with the Disbursing Agent with the Bankruptcy Court and serve such agreement on the United States Trustee.

9. Closing of Case

If, after the Effective Date, the Chapter 11 Case is closed, such closing, (a) shall not alter, amend, revoke, or supersede the terms of the Plan, (b) shall not affect any rights of the Debtor, the holders of Claims or Interests or the treatment of any other Person under the Plan, (c) shall continue to cause the terms of the Plan to remain binding on all Persons, (d) shall cause all orders of the Bankruptcy Court to remain in full force and effect, and (e) shall cause the Bankruptcy Court to retain all jurisdiction set forth in Article XII of the Plan.

10. Effectuating Documents; Further Transactions

The chief executive officer, the chief financial officer, chairman of the Debtor's board of directors or any other executive officer of the Debtor shall be authorized to execute, deliver, file, or record such contracts, instruments, and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate

1 and further evidence the terms and conditions of the Plan. The secretary or assistant
2 secretary of the Debtor shall be authorized to certify or attest to any of the foregoing
3 actions.

4 **11. Withholding and Reporting Requirements**

5 In connection with the Plan, the Reorganized Debtor shall (a) comply with all
6 applicable withholding and reporting requirements imposed by any federal, state or
7 local taxing authority; (b) timely file all tax returns as required by law to be filed; (c)
8 be authorized to engage accountants or such other professionals to prepare and file all
9 tax returns as required by law to be filed; (d) take such other actions as are reasonably
10 necessary, including the allocation of sufficient funds, to file such returns; and (e)
11 shall timely pay all taxes arising under any requirements or tax returns applicable to
12 the Plan.

13 **12. Quarterly Reports and United States Trustee's Fees**

14 The Reorganized Debtor shall have the obligation to file quarterly reports in
15 the format prescribed by the United States Trustee and pay the United States Trustee's
16 fees required to be paid pursuant to 28 U.S.C. § 1930(a)(6) which obligation shall end
17 upon entry of a final decree or other order Closing the Chapter 11 Case.

18 **13. Preservation of Causes of Action**

19 **a. Vesting of Causes of Action.** In accordance with § 1123(b)
20 of the Bankruptcy Code, except as otherwise provided in the Plan, the Reorganized
21 Debtor shall retain and may enforce all rights to commence and pursue, as appropriate,
22 any and all claims and Causes of Action held by the Debtor and/or the Estate, whether
23 arising before or after the Petition Date. All such claims and Causes of Action, along
24 with all rights, interests and defenses related thereto, shall vest with the Reorganized
25 Debtor.

26 **b. Reservation of Causes of Action.** Unless any Cause of
27 Action against a Person is expressly waived, relinquished, exculpated, released,
28 compromised or settled in the Plan or a Final Order, and except as to the Pre-Petition

1 Senior Lenders, the Debtor and the Reorganized Debtor specifically reserve all
2 Causes of Action, for later adjudication. Therefore, no preclusion doctrine, estoppel
3 (judicial, equitable or otherwise) or laches shall apply to any of the Causes of Action
4 upon, after or as a consequence of the confirmation, the Effective Date or
5 consummation of the Plan. Without limiting the foregoing, the Causes of Action
6 reserved under the Plan include the Causes of Action disclosed in the Debtor's
7 Schedules against (i) Trilliant (breach of contract regarding license agreement; breach
8 of contract for failure to purchase promissory notes pursuant to its letter agreement
9 with the Debtor to purchase promissory notes issued by the Debtor); (ii) Vula
10 Telematix (Pty) Ltd. (nonpayment for 3 years, breach of contract, damages in the
11 amount of \$41,000); (iii) rpmaNetworks aka MEC Telematik FZ LLC corporation
12 (unpaid licenses, breach of contract, damages in the amount of \$8 million); (iv) Wuxi
13 Jiuzhou Communications Technology Co., Ltd (nonpayment, breach of contract,
14 damages in the amount of \$384,754); (v) Totum Labs (<https://totumlabs.com/>) for
15 patent infringement and (vi) the Debtor's former officers and directors, including John
16 Horn and Ted Myers, for breaches of fiduciary duties, negligence, misappropriation
17 and related claims; (vi) RPMA International Corp (triggered escrow release without
18 cause and nonpayment, breach of contract, damages in the amount of \$7,808); (vii)
19 JBJK (breach of contract for failure to purchase promissory notes pursuant to its note
20 and warrant purchase agreement with the Debtor to purchase promissory notes issued
21 by the Debtor) and (viii) LFT (breach of contract for failure to purchase promissory
22 notes pursuant to its note and warrant purchase agreement with the Debtor to purchase
23 promissory notes issued by the Debtor). In addition, the Causes of Action reserved
24 under the Plan included any Causes of Action regarding any transfers disclosed in the
25 Debtor's Statement of Financial Affairs ("SOFA"), including Avoidance Actions.

26 **c. Preservation of Defensive Use of Causes of Action.**

27 Whether or not any Cause of Action is pursued or abandoned, the Debtor and the
28 Reorganized Debtor reserve their rights to use any such Cause of Action defensively,

1 including for the purposes of asserting a setoff or recoupment, or to object to all or
2 part of any Claim pursuant to § 502(d) of the Bankruptcy Code or otherwise.

3 **d. Discretion to Pursue or Settle**

4 The Reorganized Debtor shall have discretion to pursue or not to pursue, to
5 settle or not to settle, to try or not to try, and/or to appeal or not to appeal all
6 Causes of Action.

7 **14. No Liability for Solicitation or Participation**

8 As specified in § 1125(e) of the Bankruptcy Code, Persons that solicit
9 acceptances or rejections of the Plan and/or that participate in the offer, issuance,
10 sales, or purchase of securities offered or sold under the Plan, in good faith and in
11 compliance with the applicable provisions of the Bankruptcy Code, shall not be liable,
12 on account of such solicitation or participation, for violation of any applicable law,
13 rule, or regulation governing the solicitation of acceptances or rejections of the Plan
14 or the offer, issuance, sale, or purchase of securities.

15 **15. Exemption From Certain Taxes.**

16 Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property
17 pursuant hereto, including the Exit Facility liens and any transfer from a Debtor to a
18 Reorganized Debtor or to any Person pursuant to, in contemplation of, or in
19 connection with the Plan, shall not be subject to any stamp tax, recording tax, personal
20 property tax, real estate transfer tax, sales tax, use tax, privilege tax, or other similar
21 tax or governmental assessment in the United States, and the Confirmation Order shall
22 direct and be deemed to direct the appropriate federal, state or local government
23 officials or agents to forgo the collection of any such tax or governmental assessment
24 and to accept for filing and recordation instruments or other documents pursuant to
25 such transfers of property without the payment of any such tax or governmental
26 assessment. Such exemption specifically applies, without limitation, to (1) the
27 creation of any mortgage, deed of trust, lien or other security interest; (2) the assuming
28 and assigning of any contract, lease or sublease; (3) any transaction authorize by the

1 Plan; (4) any sale of an asset by the Reorganized Debtor in furtherance of the Plan,
2 including but not limited to any sale of personal or real property and (4) the making
3 or delivery of any deed or other instrument of transfer under, in furtherance of or in
4 connection with the Plan.

5 **E. Distribution Provisions**

6 **1. Distributions**

7 Subject to Bankruptcy Rule 9010, all distributions under the Plan shall be made
8 by the Disbursing Agent pursuant to the terms and conditions contained in the Plan;
9 provided, however, that no distribution shall be made on behalf of any Claim which
10 may be subject to disallowance under § 502(d) of the Bankruptcy Code.

12 **2. Distributions of Cash**

13 All distributions of Cash to be made by the Disbursing Agent pursuant to the
14 Plan shall be made by a check or wire transfer from the Disbursing Agent's account
15 maintained in accordance with the Plan.

16 **3. Effective Date and Subsequent Distributions**

17 On or as soon as practicable after the Effective Date, the New Common Stock
18 shall issue as described in the Plan. For the first year in which funds are deposited
19 into the Creditors Account, the Disbursing Agent shall make the initial distributions
20 as soon as practicable thereafter (the "**Initial Distribution Date**") to those entitled to
21 distribution in accordance with the terms and provisions of the Plan. For each year
22 thereafter, if and when funds are deposited in the Creditors Account for such year, the
23 Disbursing Agent shall make distributions as soon as practicable thereafter (a
24 "**Subsequent Distribution Date**") to those entitled to distribution in accordance with
25 the terms and provisions of the Plan.

26 **4. Delivery of Distributions and Undeliverable Distributions**

27 Distributions to the holder of an Allowed Claim or Interest shall be made at the
28 address of such holder as set forth on the Schedules unless superseded by the address

1 as set forth on the Proof of Claim filed by such holder or by a written notice to the
2 Disbursing Agent providing actual knowledge to the Disbursing Agent of a change of
3 address. If any holder's distribution is returned as undeliverable, no further
4 distributions to such holder shall be made unless and until the Disbursing Agent is
5 notified in writing within six months of the distribution date of such holder's then
6 current address, at which time all distributions shall be made to such holder, without
7 interest. All claims for undeliverable distributions shall be made within six months
8 after the date such undeliverable distribution was initially made. If any claim for an
9 undeliverable distribution is not timely made as provided herein, such claim shall be
10 forever barred with prejudice. After such date, (a) all unclaimed property shall be
11 applied first to satisfy the costs of administering and fully consummating the Plan,
12 then shall be transferred to the Reorganized Debtor and available to be used for
13 general corporate purposes, including working capital, and (b) the holder of any such
14 Claim or Interest shall not be entitled to any other or further distribution under the
15 Plan on account of such undeliverable distribution or such Claim or Interest.

16 **5. Time Bar to Cash Payments and Disallowances**

17 Checks issued by the Disbursing Agent in respect of Allowed Claims shall be
18 void if not negotiated within three months after the date of issuance thereof. Requests
19 for reissuance of any check shall be made to the Disbursing Agent by the holder of
20 the Allowed Claim to whom such check originally was issued, on or before the
21 expiration of three months following the date of issuance of such check. After such
22 date, (a) all funds held on account of such void check shall be applied first to satisfy
23 the costs of administering and fully consummating the Plan, then will be available to
24 the Reorganized Debtor to be used for general corporate purposes, including working
25 capital, (b) the Claim of the holder of any such void check shall be disallowed, and
26 (c) such Claimant shall not be entitled to any other or further distribution on account
27 of such Claim.

28 **6. Minimum Distributions**

If a distribution to be made to a holder of an Allowed Claim on any Distribution Date would be \$25.00 or less, notwithstanding any contrary provision of the Plan, no distribution will be made to such Claimant. In addition, no fractional shares of New Common Stock shall be distributed and no Cash shall be distributed in lieu of such fractional amounts.

7. Transactions on Business Days

If the Effective Date or any other date on which a transaction, event or act may occur or arise under the Plan shall occur on Saturday, Sunday or other day that is not a Business Day, the transaction, event or act contemplated by the Plan to occur on such day shall instead occur on the next day which is a Business Day.

8. Distributions after Allowance

Distributions to each holder of a Disputed Claim, to the extent that such Claim ultimately becomes Allowed or estimated for distribution purposes, shall be made in accordance with the provisions of the Plan governing the Class of Claims to which such holder belongs.

9. Disputed Payments

If any dispute arises as to the identity of a holder of an Allowed Claim who is to receive any distribution, the Disbursing Agent may, in lieu of making such distribution to such Person, make such distribution into an escrow account until the disposition thereof shall be determined by the Bankruptcy Court or by written agreement among the interested parties to such dispute.

10. No Distributions in Excess of Allowed Amount of Claim

Notwithstanding anything to the contrary herein, no holder of an Allowed Claim shall receive in respect of such Claim any distribution in excess of the Allowed amount of such Claim.

11. Reservation of Claim Objections

Unless any objection to a Claim is expressly waived, relinquished, released, compromised or settled in the Plan or a Final Order, the Debtor and the Reorganized

1 Debtor specifically reserve all such objections, including without limitation
2 objections to the amount or validity of any Claim. The Debtor has not yet completed
3 its analysis into and investigation of the Claims and objections thereto. Accordingly,
4 no preclusion doctrine, estoppel (judicial, equitable or otherwise) or laches shall apply
5 to any objection to any Claim upon, after or as a consequence of the confirmation, the
6 Effective Date or consummation of the Plan.

7 **F. Treatment of Executory Contracts and Unexpired Leases**

8 **1. Rejection of Executory Contracts and Unexpired Leases**

9 Except as otherwise provided in the Confirmation Order, pursuant to §§ 365(a)
10 and 1123(b)(2) of the Bankruptcy Code, all remaining Executory Contracts and
11 Unexpired Leases that exist between the Debtor and any Person shall be deemed
12 rejected as of the Effective Date, except for any Executory Contract or Unexpired
13 Lease (i) that has been assumed, assumed and assigned or rejected pursuant to an
14 order of the Bankruptcy Court entered prior to the Effective Date, (ii) as to which a
15 motion for approval of the assumption, assumption and assignment or rejection has
16 been filed (including a motion seeking an order authorizing, but not directing, the
17 Debtor to assume, assume and assign, or reject such Executory Contract or Unexpired
18 Lease) prior to the Effective Date, (iii) agreed to be excluded from such rejection
19 pursuant to stipulation with the Debtor or the Reorganized Debtor, or (iv) that is
20 identified on the Plan Supplement as being excluded from rejection. Any claims
21 arising from the rejection of an Executory Contract or Unexpired Lease (“**Rejection**
22 **Claims**”) shall be classified in Class 11 under the Plan. For the avoidance of doubt,
23 the foregoing shall apply to the Trilliant Contract to the extent a determination is made
24 that, contrary to the Debtor’s position, the Debtor’s termination of the Trilliant
25 Contract prior to the Petition Date was not effective, in which case the Trilliant
26 Contract shall either (1) be deemed rejected pursuant to the Plan, and Trilliant may
27 assert continued rights in the Debtor’s intellectual property under section 365(n) of
28 the Bankruptcy Code, or (2) be the subject of continued litigation regarding whether

1 the Trilliant Contract is subject to termination as a result of pre-petition and
2 continuing breaches, and the consequences of such termination. For further avoidance
3 of doubt, (a) the Debtor asserts that it effectively terminated the Trilliant Contract
4 prior to the Petition Date based on certain breaches by Trilliant (the ‘Pre-Petition
5 Termination’), and therefore, the Trilliant Contract is not an Executory Contract; (b)
6 Trilliant contends that the purported Pre-Petition Termination was ineffective as the
7 Trilliant Contract required a 60-day notice and cure period; (c) the Debtor contends
8 that such notice and cure period was inapplicable as certain of Trilliant’s breaches
9 were and are incurable; (d) Trilliant disputes that such notice and cure period was
10 inapplicable because certain of Trilliant’s breaches were allegedly incurable; (e)
11 Trilliant commenced Adversary Proceeding No. 20-90108 seeking a judicial
12 determination of this and other related issues; (f) the Debtor reserves the right to assert
13 that existing breaches, and/or other and further breaches, give rise to the right to
14 terminate the Trilliant Contract even if the Pre-Petition Termination was not effective
15 (the “Post-Petition Termination”); and (g) Trilliant reserves all rights to dispute such
16 purported Post-Petition Termination.

17

18

19 **2. Bar Date for Filing Rejection Claims**

20 A Proof of Claim asserting a Rejection Claim shall be filed with the Bankruptcy
21 Court on or before the fortieth (40th) day after the Effective Date or be forever barred
22 from assertion of any Rejection Claim against and payment from the Reorganized
23 Debtor.

24 **G. Conditions Precedent to Effectiveness of the Plan**

25 **1. Conditions to the Effective Date**

26 The Effective Date will not occur, and the Plan will not be consummated unless
27 and until the following conditions have been satisfied or duly waived pursuant to
28 Section 10.1 of the Plan:

1 **a.** The Confirmation Order, with the Plan and all exhibits and
2 annexes to each, in form and substance reasonably acceptable to the Debtor and the
3 Exit Facility Lender, shall have been entered by the Bankruptcy Court, and shall be a
4 Final Order, and no request for revocation of the Confirmation Order under § 1144 of
5 the Bankruptcy Code shall have been made, or, if made, shall remain pending;
6 provided, however, that if the Confirmation Order has not become a Final Order
7 because a notice of appeal has been timely filed and the parties are not stayed or
8 enjoined from consummating the Plan, Section 10.1(a) of the Plan shall be deemed
9 satisfied;

10 **b.** All actions, documents and agreements necessary to
11 implement the Plan shall be in form and substance reasonably satisfactory to the Exit
12 Facility Lender and the Debtor and shall have been effected or executed as applicable;
13 and

14 **c.** The Exit Facility Lender and the Debtor shall have executed
15 the Exit Financing Agreement.

16 **2. Waiver of Conditions**

17 The conditions set forth in Section 10.1 of the Plan may be waived by the Debtor
18 and the Exit Facility Lender, without any notice to any other parties-in-interest or the
19 Bankruptcy Court and without a hearing.

20 **H. Modification of the Plan**

21 The Debtor may propose amendments to or modifications of the Plan under §
22 1127 of the Bankruptcy Code at any time prior to the entry of the Confirmation Order.
23 After the Confirmation Date, the Reorganized Debtor may remedy any defects or
24 omissions or reconcile any inconsistencies in the Plan or in the Confirmation Order
25 in such manner as may be necessary to carry out the purposes and intent of the Plan
26 so long as the interests of Claimants are not materially and adversely affected.

27 **I. Releases and Related Matters**

28 **1. Releases by Holders of Claims for Post-Petition Conduct**

1 As of the Effective Date, in consideration for the obligations of the Debtor and
2 the Reorganized Debtor under the Plan and the cash and other contracts, instruments,
3 releases, agreements or documents to be entered into or delivered in connection with
4 the Plan, each holder of a Claim or Interest will be deemed to forever release, waive
5 and discharge all claims, obligations, suits, judgments, damages, demands, debts,
6 rights, causes of action and liabilities (other than the right to enforce obligations under
7 or reserved by the Plan and the contracts, instruments, releases, agreements and
8 documents delivered thereunder and the right to contest Professional Fee Claims),
9 whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known
10 or unknown, foreseen or unforeseen, then existing or thereafter arising in law, equity
11 or otherwise, that are based in whole or in part on any act, omission, transaction or
12 other occurrence taking place after the Petition Date and through the Effective Date,
13 in any way relating to the Debtor, the Chapter 11 Case or the Plan that such Person
14 has, had or may have against (i) the Debtor, (ii) the Debtor's directors, officers,
15 employees, agents and attorneys, (iii) the Committee and its agents, attorneys, and
16 other professionals; (iv) the Pre-Petition Senior Lenders and their agents, attorneys,
17 and other professionals; (v) the DIP Lender and its employees, agents, attorneys and
18 other professionals and (vi) the Exit Facility Lender and its employees, agents,
19 attorneys and other professionals.

20

21

22 **2. Releases by the Debtor**

23 As of the Effective Date, for good and valuable consideration, the adequacy of
24 which is hereby confirmed, the Debtor and the Reorganized Debtor and any and all
25 Persons claiming through or on behalf of the Debtor or the Reorganized Debtor
26 including, without limitation, any Committee, will be deemed to forever release,
27 waive and discharge all claims, obligations, suits, judgments, damages, demands,
28 debts, rights, Causes of Action and liabilities whatsoever in connection with or related

1 to the Debtor, the Chapter 11 Case or the Plan (other than the rights of the Debtor or
2 Reorganized Debtor to enforce the Plan and the contracts, instruments, releases, and
3 other agreements or documents delivered thereunder) whether liquidated or
4 unliquidated, fixed or contingent, matured or unmatured, known or unknown,
5 foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise
6 that are based in whole or in part on any act, omission, transaction, event or other
7 occurrence taking place on or prior to the Effective Date, other than for gross
8 negligence or willful misconduct, in any way relating to the Debtor, the Reorganized
9 Debtor, the Chapter 11 Case or the Plan, and that may be asserted by the Debtor or its
10 Estate or the Reorganized Debtor against (i) the Debtor's directors, officers,
11 employees, agents and attorneys; (ii) the DIP Lender and its employees, agents,
12 attorneys and other professionals; (iii) the Committee and its agents, attorneys, and
13 other professionals; (iv) the Pre-Petition Senior Lenders and their agents, attorneys,
14 and other professionals; and (v) the Exit Facility Lender and its employees, agents,
15 attorneys and other professionals. The Debtor, the Reorganized Debtor, the
16 Committee, the Pre-Petition Senior Lenders, and DIP Lender, and each of their
17 respective agents may reasonably rely upon the opinions of their respective counsel,
18 accountants, and other experts, and professionals and such reliance, if reasonable,
19 shall conclusively establish good faith and the absence of gross negligence or willful
20 misconduct; provided, however, that a determination that such reliance is
21 unreasonable shall not, by itself, constitute a determination or finding of bad faith,
22 gross negligence or willful misconduct.

23

24

25 **3. Injunction Related to Releases**

26 The Confirmation Order will permanently enjoin the commencement or
27 prosecution by any Person, whether directly, derivatively or otherwise, of any claims,
28 obligations, suits, judgments, damages, demands, debts, rights, causes of action or

1 liabilities released pursuant to the Plan, including pursuant to the releases in Section
2 13.3 of the Plan.

3 **J. Dissolution of the Committee**

4 On the Effective Date, any Committee shall dissolve automatically, whereupon
5 its members, Professionals, and agents shall be released from any further duties and
6 responsibilities in the Chapter 11 Case and under the Bankruptcy Code, except with
7 respect to applications for Professional Fee Claims. The Professionals retained by the
8 Committee shall be entitled to compensation and reimbursement of (i) fees and
9 expenses for services rendered through and including the date it is dissolved, and (ii)
10 fees and expenses for services rendered in connection with applications for allowance
11 of compensation and reimbursement of expenses pending on the Effective Date or
12 filed after the Effective Date pursuant to Section 2.2 of the Plan or any objections
13 thereto.

14 **K. Default**

15 If the reorganized Debtor fails to make any payment, or to perform any other
16 payment obligation required under the Plan, for more than thirty (30) days after the
17 time specified in the Plan for such payment, any member of a Class affected by the
18 default may serve upon the Reorganized Debtor a written notice of default. If the
19 Reorganized Debtor fails within ninety (90) days after the date of service of the notice
20 of default either: (i) to cure the default; (ii) to obtain from the court an extension of
21 time to cure the default; or (iii) to obtain from the court a determination that no default
22 occurred, then the Reorganized Debtor is in default with respect to such payment or
23 obligation (a “**Material Default**”) under the Plan. Notwithstanding the foregoing, a
24 default or material default under the plan may be waived in writing by holders of more
25 than 50% of the outstanding allowed amount of the affected Claim(s). Upon Material
26 Default, such member of such Class affected by the default: (i) may file and serve a
27 motion to dismiss the Chapter 11 Case or to convert the Chapter 11 Case to Chapter
28 7; or (ii) without further order of the court be deemed to have relief from stay to the

1 extent necessary, and may pursue its lawful remedies to enforce and collect Debtor's
2 pre-confirmation obligations.

3 **L. Effect of Confirmation of the Plan**

4 **1. Discharge of the Debtor**

5 PURSUANT TO § 1141(D) OF THE BANKRUPTCY CODE AND, EXCEPT
6 AS OTHERWISE SPECIFICALLY PROVIDED IN THE PLAN OR IN THE
7 CONFIRMATION ORDER, THE RIGHTS AFFORDED AND THE PAYMENTS
8 AND DISTRIBUTIONS TO BE MADE AND THE TREATMENT UNDER THE
9 PLAN SHALL BE IN COMPLETE EXCHANGE FOR, AND IN FULL AND
10 UNCONDITIONAL SETTLEMENT, SATISFACTION, DISCHARGE, AND
11 RELEASE OF ANY AND ALL EXISTING DEBTS AND CLAIMS AND
12 TERMINATION OF ALL INTERESTS OF ANY KIND, NATURE, OR
13 DESCRIPTION WHATSOEVER AGAINST OR IN THE DEBTOR, THE
14 REORGANIZED DEBTOR, THEIR PROPERTY, THE DEBTOR'S ASSETS, OR
15 THE ESTATE, AND SHALL EFFECT A FULL AND COMPLETE RELEASE,
16 DISCHARGE, AND TERMINATION OF ALL LIENS, SECURITY INTERESTS,
17 OR OTHER CLAIMS, INTERESTS, OR ENCUMBRANCES UPON ALL OF THE
18 DEBTOR'S ASSETS AND PROPERTY. FURTHER, ALL PERSONS ARE
19 PRECLUDED FROM ASSERTING, AGAINST THE DEBTOR OR THE
20 REORGANIZED DEBTOR OR THEIR RESPECTIVE SUCCESSORS, OR ANY
21 PROPERTY THAT IS TO BE DISTRIBUTED UNDER THE TERMS OF THE
22 PLAN, ANY CLAIMS, OBLIGATIONS, RIGHTS, CAUSES OF ACTION,
23 LIABILITIES, OR INTERESTS BASED UPON ANY ACT, OMISSION,
24 TRANSACTION, OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT
25 OCCURRED PRIOR TO THE EFFECTIVE DATE, OTHER THAN AS
26 EXPRESSLY PROVIDED FOR IN THE PLAN, OR THE CONFIRMATION
27 ORDER, WHETHER OR NOT (A) A PROOF OF CLAIM BASED UPON SUCH
28 DEBT IS FILED OR DEEMED FILED UNDER § 501 OF THE BANKRUPTCY

1 CODE; (B) A CLAIM BASED UPON SUCH DEBT IS ALLOWED; OR (C) THE
2 CLAIMANT BASED UPON SUCH DEBT HAS ACCEPTED THE PLAN.

3 **2. Injunction**

4 EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR THE
5 CONFIRMATION ORDER, ALL CLAIMANTS AND HOLDERS OF INTERESTS
6 ARISING PRIOR TO THE EFFECTIVE DATE SHALL BE PERMANENTLY
7 BARRED AND ENJOINED FROM ASSERTING AGAINST THE
8 REORGANIZED DEBTOR OR THE DEBTOR, OR THEIR SUCCESSORS OR
9 PROPERTY, OR THE DEBTOR'S ASSETS, ANY OF THE FOLLOWING
10 ACTIONS ON ACCOUNT OF SUCH CLAIM OR INTEREST:
11 (I) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR
12 OTHER PROCEEDING ON ACCOUNT OF SUCH CLAIM AGAINST OR
13 INTEREST IN THE REORGANIZED DEBTOR, THE DEBTOR, OR THE
14 PROPERTY TO BE DISTRIBUTED UNDER THE TERMS OF THE PLAN,
15 OTHER THAN TO ENFORCE ANY RIGHT TO DISTRIBUTION WITH
16 RESPECT TO SUCH PROPERTY UNDER THE PLAN; (II) ENFORCING,
17 ATTACHING, COLLECTING, OR RECOVERING IN ANY MANNER ANY
18 JUDGMENT, AWARD, DECREE, OR ORDER AGAINST THE REORGANIZED
19 DEBTOR, THE DEBTOR OR ANY OF THE PROPERTY TO BE DISTRIBUTED
20 UNDER THE TERMS OF THE PLAN, OTHER THAN AS PERMITTED UNDER
21 SUB-PARAGRAPH (I) ABOVE; (III) CREATING, PERFECTING, OR
22 ENFORCING ANY LIEN OR ENCUMBRANCE AGAINST PROPERTY OF THE
23 REORGANIZED DEBTOR, THE DEBTOR, OR ANY PROPERTY TO BE
24 DISTRIBUTED UNDER THE TERMS OF THE PLAN; (IV) ASSERTING ANY
25 RIGHT OF SETOFF, SUBROGATION, OR RECOUPMENT OF ANY KIND,
26 DIRECTLY OR INDIRECTLY, AGAINST ANY OBLIGATION DUE THE
27 DEBTOR, THE REORGANIZED DEBTOR, THEIR ASSETS OR ANY OTHER
28 PROPERTY OF THE DEBTOR, THE REORGANIZED DEBTOR, OR ANY

1 DIRECT OR INDIRECT TRANSFEREE OF ANY PROPERTY OF, OR
2 SUCCESSOR IN INTEREST TO, ANY OF THE FOREGOING PERSONS; AND
3 (V) ACTING OR PROCEEDING IN ANY MANNER, IN ANY PLACE
4 WHATSOEVER, THAT DOES NOT CONFORM TO, OR COMPLY WITH, THE
5 PROVISIONS OF THE PLAN. THE FOREGOING DISCHARGE, RELEASE AND
6 INJUNCTION ARE AN INTEGRAL PART OF THE PLAN AND ARE
7 ESSENTIAL TO ITS IMPLEMENTATION. THE DEBTOR AND THE
8 REORGANIZED DEBTOR SHALL HAVE THE RIGHT TO INDEPENDENTLY
9 SEEK THE ENFORCEMENT OF THE DISCHARGE, RELEASE AND
10 INJUNCTION SET FORTH IN ARTICLE XI OF THE PLAN.

11 **3. No Waiver of Discharge**

12 Except as otherwise specifically provided in the Plan, nothing in the Plan shall
13 be deemed to waive, limit, or restrict in any way the discharge granted to the Debtor
14 upon confirmation of the Plan by § 1141 of the Bankruptcy Code.

15 **4. Binding Effect**

16 As of the Effective Date, the Plan shall be binding upon and inure to the benefit
17 of the Debtor, the Reorganized Debtor, all Claimants and holders of Interests, other
18 parties-in-interest and their respective heirs, successors, and assigns.

19 **5. Term of Injunctions or Stays**

20 Unless otherwise provided in the Plan, all injunctions or stays provided for in
21 the Chapter 11 Case pursuant to §§ 105 or 362 of the Bankruptcy Code, or otherwise,
22 and in effect on the Confirmation Date, shall remain in full force and effect until the
23 Effective Date, at which time they are replaced with the injunction set forth in Section
24 11.1 of the Plan.

25 **V. THE REORGANIZED DEBTOR**

26 **A. The Exit Financing**

27 Pursuant to the Exit Financing Agreement, NDJR will provide the Reorganized
28 Debtor with the Exit Facility upon the Effective Date of the Plan. The Exit Financing

1 Agreement for the Exit Facility shall be on the terms and conditions substantially
2 similar to those of the DIP Credit Agreement and otherwise consistent with the terms
3 set forth in Section 6.6 of the Plan.

4

5 **B. Issuance of New Common Stock**

6 Pursuant to the Debt-For-Equity Exchange described in the Plan, on the
7 Effective Date, New Common Stock in the Reorganized Debtor will be issued to
8 NDJR in exchange of the satisfaction of the portion of the Pre-Petition Second Lien
9 Claim that equals the Settled Pre-Petition Second Lien Debt Amount.

10 **C. Business and Property of the Reorganized Debtor**

11 The Reorganized Debtor intends to continue to operate and develop the
12 business the Debtor operated prior to the Petition Date.

13 **D. Management of the Reorganized Debtor**

14 The Reorganized Debtor will initially be managed by the below individuals.
15 Pursuant to the US Trustee's Guidelines, also disclosed below is the respective annual
16 compensation proposed to be paid to each individual and whether each individual is
17 an "insider" as defined by 11 U.S.C. § 1129(a)(5).

- 18 • Chief Executive Officer: Alvaro Gazzolo, insider (\$275,000)
19 • Chief Financial Officer: To be determined.

20 The below individuals are proposed as of the Effective Date to serve as
21 directors and/or officers of the Reorganized Debtor. Additional directors may be
22 added prior to the Effective Date.

- 23 • Alvaro Gazzolo
24 • Brian Rossing

25 **E. Projected Financial Information**

26 Attached hereto as Exhibit C are the financial projections prepared by the
27 Debtor for the Reorganized Debtor's operations for the period described therein after
28

1 the Effective Date (the “Projections”). These Projections support, among other things,
2 the Debtor’s discussion of the feasibility of the Plan pursuant to § 1129(a)(11) of the
3 Bankruptcy Code, discussed in Section VI.D.2 below.
4

5 VI. CONFIRMATION OF THE PLAN

6 A. Introduction

7 The Bankruptcy Code requires a bankruptcy court to determine whether a plan
8 complies with the requirements of chapter 11 of the Bankruptcy Code before such
9 plan can be confirmed. It requires further that a disclosure statement concerning such
10 plan be adequate and includes information concerning all payments made or promised
11 by the plan proponent in connection with the plan.

12 To confirm the Plan, the Bankruptcy Court must find that the requirements of
13 the Bankruptcy Code have been met. Thus, even if the requisite vote is achieved for
14 the Voting Classes, the Bankruptcy Court must make independent findings respecting
15 the Plan’s conformity with the requirements of the Bankruptcy Code before it may
16 confirm the Plan. Some of these statutory requirements are discussed below.

17 B. Voting

18 Pursuant to the Bankruptcy Code, only holders of Allowed Claims or Interests
19 that are Impaired under the terms and provisions of the Plan and that receive
20 distributions thereunder are entitled to vote for acceptance or rejection of the Plan. A
21 holder of a Claim or Interest whose legal, equitable, or contractual rights are altered,
22 modified or changed by the proposed treatment under the Plan or whose treatment
23 under the Plan is not provided for in § 1124 of the Bankruptcy Code is considered
24 Impaired. Pursuant to § 1126(f) of the Bankruptcy Code, holders of Claims that are
25 Unimpaired are conclusively presumed to have accepted the Plan and are not entitled
26 to vote. Pursuant to § 1126(g) of the Bankruptcy Code, any holders of Claims or
27 Interests that do not receive or retain any property under the Plan on account of such
28

1 Claims or Interests are conclusively deemed to have rejected the Plan and are not
2 entitled to vote.

3 Votes on the Plan will be counted only with respect of Allowed Claims that (i)
4 belong to a Voting Classes or (ii) are otherwise permitted by the Bankruptcy Code to
5 vote.

6 **C. Acceptance**

7 The Bankruptcy Code defines acceptance of a plan by an impaired class of
8 claims as acceptance by holders of at least two-thirds in dollar amount, and more than
9 one-half in number, of claims of that class that actually vote. The Bankruptcy Code
10 defines acceptance of a plan by an impaired class of interests as acceptance by holders
11 of at least two-thirds in dollar amount of interests of that class that actually vote.
12 Acceptance of a plan need only be solicited from holders of claims or interests whose
13 claims or interests are impaired and not deemed to have rejected the Plan. Except in
14 the context of a “cram down” pursuant to § 1129(b) of the Bankruptcy Code, as a
15 condition to confirmation of a plan the Bankruptcy Code requires that, with certain
16 exceptions, each class of impaired claims or interests accept the plan.

17 In the event the requisite vote is not obtained as to a particular Class or Classes
18 of Claims or Interests, the Debtor has the right, assuming that at least one Class of
19 Impaired Claims or Interests has accepted the Plan, to request confirmation of the
20 Plan pursuant to § 1129(b) of the Bankruptcy Code. Section 1129(b) permits
21 confirmation of a plan notwithstanding rejection by one or more classes of impaired
22 claims or interests if the bankruptcy court finds that the plan does not “discriminate
23 unfairly” and is “fair and equitable” with respect to the rejecting class or classes. This
24 procedure is commonly referred to in bankruptcy parlance as “cram down.” As such,
25 if any Voting Class votes to reject the Plan, the Debtor will request confirmation of
26 the Plan under § 1129(b) of the Bankruptcy Code.

27 **D. Confirmation of the Plan**

28

1 At the Confirmation Hearing, the Bankruptcy Court will determine whether the
2 requirements of section 1129(a) of the Bankruptcy Code have been satisfied with
3 respect to the Plan. Section 1129(a) of the Bankruptcy Code requires that, among
4 other things, for a plan to be confirmed:

- 5 • The plan satisfies the applicable provisions of the Bankruptcy Code.
- 6 • The proponent of the plan has complied with the applicable provisions
7 of the Bankruptcy Code.
- 8 • The plan has been proposed in good faith and not by any means
9 forbidden by law.
- 10 • Any payment made or promised by the proponent under the plan for
11 services or for costs and expenses in, or in connection with, the chapter
12 11 case, or in connection with the plan and incident to the case, has been
13 disclosed to the bankruptcy court, and any such payment made before
14 the confirmation of the plan is reasonable, or if such payment is to be
15 fixed after confirmation of the plan, such payment is subject to the
16 approval of the bankruptcy court as reasonable.
- 17 • The proponent of the plan has disclosed the identity and affiliations of
18 any individual proposed to serve, after confirmation of the plan, as a
19 director, officer or trustee of the debtor, an affiliate of the debtor
20 participating in the plan with the debtor, or a successor to the debtor
21 under the plan. The appointment to, or continuance in, such office of
22 such individual must be consistent with the interests of creditors and with
23 public policy and the proponent must have disclosed the identity of any
24 insider that the reorganized debtor will employ or retain, and the nature
25 of any compensation for such insider.
- 26 • With respect to each class of impaired claims or interests, either each
27 holder of a claim or interest in such class has accepted the plan, or will
28 receive or retain under the plan on account of such claims or interests,

1 property of a value, as of the effective date of the plan, that is not less
2 than the amount that such holder would receive or retain if the debtor
3 were liquidated on such date under chapter 7 of the Bankruptcy Code.

- 4 • Each class of claims has either accepted the plan or is not impaired under
5 the plan, subject to Section VI.D.4, “Cram Down.”
- 6 • Except to the extent that the holder of a claim has agreed to a different
7 treatment of such claim, the plan provides that allowed administrative
8 expense claims and priority claims (other than tax claims) will be paid in
9 full on the effective date and that priority tax claims will receive on
10 account of such claims deferred cash payments, over a period not
11 exceeding five (5) years after the order for relief, of a value, as of the
12 effective date, equal to the allowed amount of such claim.
- 13 • If a class of claims is impaired, at least one (1) impaired class of claims
14 has accepted the plan, determined without including any acceptance of
15 the plan by any insider holding a claim in such class.
- 16 • Confirmation of the plan is not likely to be followed by the liquidation,
17 or the need for further financial reorganization, of the debtor or any
18 successor to the debtor under the plan, unless such liquidation or
19 reorganization is proposed in the plan.

20 Subject to receiving the requisite votes in accordance with section 1129(a)(8)
21 of the Bankruptcy Code and the “cram down” of Impaired Classes voting against the
22 Plan or not receiving any distribution under the Plan, the Debtor believes that (i) the
23 Plan satisfies all of the statutory requirements of chapter 11 of the Bankruptcy Code,
24 (ii) the Debtor has complied or will have complied with all of the requirements of
25 chapter 11, and (iii) the Plan has been proposed in good faith.

26 Set forth below is a more detailed summary of certain of the relevant statutory
27 confirmation requirements.

28 **1. Best Interests of Holders of Claims and Interests**

1 The “best interests” test requires that a bankruptcy court find either that all
2 members of each impaired class have accepted the plan or that each holder of an
3 allowed claim of each impaired class of claims and equity interests will receive or
4 retain under the plan on account of such claim or equity interest property of a value,
5 as of the effective date of the plan, that is not less than the amount that such holder
6 would so receive or retain if the Debtor were liquidated under chapter 7 of the
7 Bankruptcy Code on such date.

8 The Plan satisfies the best interests test as follows. The Debtor’s assets are all
9 encumbered by Liens in favor of its secured creditors, including NDJR, securing over
10 \$44 million in debt. The Marketing Process is intended to expose the Debtor to the
11 market to determine whether any recoveries are available to (i) secured creditors with
12 a Lien on the Debtor’s assets junior to that of NDJR and (ii) unsecured creditors. It is
13 only after the conclusion of the Marketing Process that the Debtor is proceeding with
14 the Plan as a better alternative for creditors. If the Marketing Process does not result
15 in any recoveries to secured creditors holding Liens junior to those of NDJR, much
16 less to unsecured creditors, then they would be “out of the money.” As such, it would
17 be likely that in a chapter 7 liquidation, the holders of such Secured Claims, Secured
18 Tax Claims, Priority Non-Tax Claims and General Unsecured Claims would receive
19 nothing. However, under the Plan, NDJR is funding the Exit Facility that will be used,
20 in part, to make the payments due on the Effective Date of the Plan, including
21 outstanding Administrative Expense Claims, Priority Non-Tax Claims, and the full
22 amount of the Pre-Petition First Lien Claim. In addition, a portion of the Pre-Petition
23 Second Lien Claim equal to the Settled Pre-Petition Second Lien Debt Amount is
24 being satisfied pursuant to the Debt-For-Equity Exchange described in the Plan.
25 Lastly, holders of General Unsecured Claims (including those Claims that are deemed
26 to be General Unsecured Claims) are receiving the right to future distributions from
27 the Creditors Account. As such, the reorganization under the Plan is in the best
28

1 interests of holders of Claims and Interests. For greater detail, see the liquidation
2 analysis attached as Exhibit Dhereto.

3 **2. Feasibility**

4 Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of a
5 plan is not likely to be followed by the liquidation, or the need for further financial
6 reorganization, of the Debtor or any successor to the Debtor, unless such liquidation
7 or reorganization is proposed in the Plan.

8 For purposes of determining whether the Plan satisfies the feasibility
9 requirement, the Debtor has analyzed its ability to meet its obligations under the Plan.
10 As part of this analysis, the Debtor has prepared the Projections attached hereto as
11 Exhibit C. The Projections provide that the Reorganized Debtor should be able to
12 meet all of its obligations under the Plan and is not likely to be liquidated after the
13 Effective Date. Among other things, the Projections provide that the Reorganized
14 Debtor, as supported by NDJR, should have the wherewithal to make the payments
15 required under the Plan, including any payments due to holders of Allowed Priority
16 Non-Tax Claims and Allowed Secured Tax Claims, as well as meet its obligations
17 under the Exit Facility.

18 Under the Plan, other than for the Pre-Petition First Lien Claim in the
19 approximate amount of \$86,000, the Exit Facility and the Claims of NDJR on account
20 of its DIP Facility and Non-Settled Pre-Petition Second Lien Debt Amount, the
21 Debtor will bear no future-looking obligations and, with respect to the obligations
22 under Pre-Petition First Lien Claim and the Exit Facility, the Debtor can feasibly
23 satisfy such obligations. With respect to the obligations under the Non-Settled Pre-
24 Petition Second Lien Debt Amount, those are favorable to the Reorganized Debtor as
25 the maturity of such indebtedness is extended for 5 years and the interest under the
26 Non-Settled Pre-Petition Second Lien Amount can be capitalized as PIK interest at
27 the option of the Reorganized Debtor. Only Allowed Secured Tax Claims and Priority
28 Non-Tax Claims will have future payments by the Reorganized Debtor that are pre-

1 determined as of the Effective Date, and the Exit Facility will be used, in part, to
2 support the Debtor to make the payments on account of such Claims. The only other
3 creditors receiving any distributions under the Plan are the holders of General
4 Unsecured Claims (including those Claims that are deemed to be General Unsecured
5 Claims). The holders of Allowed General Unsecured Claims will receive distributions
6 only to the extent there are tax savings generated by the NOL carryforwards, capped
7 at \$500,000. Further, the Reorganized Debtor will be owned by NDJR, who has the
8 financial wherewithal and ability to make further accommodations to the Reorganized
9 Debtor with respect to the indebtedness owed to NDJR or even inject further funding
10 into the Reorganized Debtor as may be needed to ensure its success.

11 While there is no guarantee that the Reorganized Debtor's actual performance
12 will mirror the Projections, the Debtor believes, based on the Projections and the
13 discussion herein, that the Reorganized Debtor should be able to meet its obligations
14 under the Plan.

15 **3. Acceptance by Impaired Classes**

16 A class is impaired under a plan unless, with respect to each claim of such class,
17 the plan (i) leaves unaltered the legal, equitable and contractual rights to which the
18 claim entitles the holder of such claim or interest; or (ii) notwithstanding a demand
19 for accelerated payment (a) cures any default and reinstates the maturity of the
20 obligation; (b) compensates the holder of such claim for damages incurred on account
21 of reasonable reliance on contractual provisions; and (c) does not otherwise alter legal,
22 equitable or contractual rights. A class that is not impaired under a plan is deemed to
23 have accepted the plan and, therefore, solicitation of acceptances to such class is not
24 required.

25 With respect to the Plan, holders of Claims in Classes 1 and 9 are Unimpaired
26 and are deemed to have accepted the Plan. Holders of Claims or Interests in Classes
27 2 through 8 and Classes 10 and 11 are Impaired and entitled to vote on the Plan.
28

1 Holders of Interests in Class 12 shall receive nothing on account of such interest and
2 are therefore deemed to reject the Plan.

3 **4. Cram Down**

4 A plan is accepted by an impaired class of claims or interests if holders of at
5 least two- thirds in dollar amount and a majority in number of claims or interests in
6 that class vote to accept the plan. Only those holders of claims or interests who
7 actually vote (and are entitled to vote) to accept or to reject a plan count in this
8 tabulation. The Bankruptcy Code contains provisions for confirmation of a plan even
9 if it is not accepted by all impaired classes, as long as at least one impaired class of
10 claims has accepted it. These so-called “cramdown” provisions are set forth in §
11 1129(b) of the Bankruptcy Code. The Plan may be confirmed under the cramdown
12 provisions if, in addition to satisfying the other requirements of § 1129 of the
13 Bankruptcy Code, it (a) is “fair and equitable” and (b) “does not discriminate unfairly”
14 with respect to each Class of Claims and Interests that is impaired under, and has not
15 accepted, the Plan.

16 The “fair and equitable” standard, also known as the “absolute priority rule,”
17 requires, among other things, that unless a dissenting class of unsecured claims or
18 interests receives full compensation for its Allowed Claims or interests, no holder of
19 Allowed Claims or interests in any junior class may receive or retain any property on
20 account of such claims or interests. The requirement that the Plan not “discriminate
21 unfairly” means, among other things, that a dissenting Class must be treated
22 substantially equally with respect to other Classes of equal rank.

23 The Debtor intends to seek “cram down” of the Plan on any Class rejecting the
24 Plan. The Debtor submits that the Plan satisfies the absolute priority rule and does not
25 unfairly discriminate against any Class that may not accept or consent to the Plan.

26 The Plan satisfies the absolute priority rule as it does not permit holders of
27 Allowed Claims or interests in any junior class to receive or retain property on account
28

1 of such claims or interests until senior classes are compensated in full for their
2 Allowed Claims.

3 As to the “discriminate unfairly” test, the Debtor submits the Plan does not
4 unfairly discriminate against any Class that may not accept or otherwise consent to
5 the Plan.

6 **5. Classification of Claims**

7 The Debtor believes that the Plan meets the classification requirements of the
8 Bankruptcy Code that require that a plan place each claim into a class with other
9 claims that are “substantially similar.”

10 **VII. CERTAIN RISK FACTORS TO BE CONSIDERED**

11 HOLDERS OF CLAIMS AGAINST AND INTERESTS IN THE DEBTOR
12 SHOULD READ AND CONSIDER CAREFULLY THE RISK FACTORS SET
13 FORTH BELOW, AS WELL AS THE OTHER INFORMATION SET FORTH IN
14 THIS DISCLOSURE STATEMENT (AND THE DOCUMENTS DELIVERED
15 TOGETHER HEREWITH AND INCORPORATED BY REFERENCE), PRIOR TO
16 VOTING TO ACCEPT OR TO REJECT THE PLAN. THESE RISK FACTORS
17 SHOULD NOT, HOWEVER, BE REGARDED AS CONSTITUTING THE ONLY
18 RISKS INVOLVED IN CONNECTION WITH THE PLAN AND ITS
19 IMPLEMENTATION.

20 **A. Financing Risks**

21 Although the Debtor projects that the Reorganized Debtor will have sufficient
22 liquidity to operate its business through completion of all payments required to be
23 made under a reorganization pursuant to the Plan, there is no assurance that the
24 Reorganized Debtor will generate sufficient revenues in the upcoming months and
25 years to cover all such payments along with all expenditures incurred in the
26 Reorganized Debtor’s business.

27 **B. Risk of Non-Confirmation or Withdrawal of the Plan**

If the Plan is not confirmed and consummated, there can be no assurance that the Debtor's Chapter 11 Case will continue rather than be converted to a liquidation under chapter 7 of the Bankruptcy Code or that an alternative plan would be on terms as favorable to the holders of Allowed Claims as the terms of the Plan.

C. Non-Consensual Confirmation of the Plan

Pursuant to the "cram down" provisions of § 1129(b) of the Bankruptcy Code, the Bankruptcy Court can confirm the Plan without the acceptances of all Impaired Classes of Claims, so long as at least one Impaired Class of Claims has accepted the Plan. For a description of the "cram down" provisions of the Bankruptcy Code, see Section VI.D.4, "Cram Down."

D. Alternatives to the Plan

If the Plan or any other chapter 11 plan for the Debtor cannot be confirmed under §§ 1129(a) and (b) of the Bankruptcy Code, the Chapter 11 Case could be converted to a case under chapter 7 of the Bankruptcy Code. After careful review of the estimated recoveries in a chapter 7 liquidation scenario and as set more in more detail in Section VI.D.1 above, the Debtor has concluded that recoveries to holders of Claims under the Plan will be higher than the recoveries in a chapter 7 case. Should the Plan not be confirmed, it is likely that distributions, if any, to holders of Claims would be eliminated or reduced by the additional fees and other costs associated with a chapter 7 liquidation.

If the Plan is not confirmed, the Debtor, or any other party-in-interest, may attempt to formulate an alternative chapter 11 plan, which might provide for a reorganization or for the liquidation of the Debtor's assets other than as provided under the Plan. Any attempt to formulate an alternative chapter 11 plan would unnecessarily delay distributions to holders of Claims and may not result in the financing and concessions by certain of the Debtor's creditors that made possible the formulation of the Plan and the distributions to creditors thereunder. In addition, due to the incurrence of additional Administrative Expense Claims during the period of

1 any delay in formulating an alternative Plan, distributions to holders of Claims could
2 be adversely impacted.

3 Accordingly, the Debtor believes that the Plan offers the best prospect of
4 recovery for the holders of Claims against the Debtor.

5 **VIII. SECURITIES LAW MATTERS**

6 **A. General**

7 The Plan provides for the Reorganized Debtor to issue New Common Stock.
8 The Debtor believes that this new stock constitutes “securities,” as defined in Section
9 2(a)(1) of the Securities Act of 1933, as amended, 15 U.S.C. §§ 77a *et seq.* (the
10 “**Securities Act11 laws.**

12 **B. Issuance of New Stock**

13 The Debtor believes that the offer and sale of the New Common Stock pursuant
14 to the Plan will be exempt from federal and state securities registration requirements
15 under various provisions of the Securities Act and the Bankruptcy Code. Section 1145
16 of the Bankruptcy Code provides that Section 5 of the Securities Act and any state
17 law requirements for the offer and sale of a security generally do not apply to the offer
18 or sale of stock, options, warrants or other securities by a debtor if (a) the offer or sale
19 occurs under a plan of reorganization, (b) the recipients of the securities hold a claim
20 against, an interest in, or claim for administrative expense against, the Debtor, and (c)
21 the securities are issued in exchange for such claim against, interest in, or claim for
22 administrative expense against, the Debtor or are issued principally in such exchange
23 and partly for cash and property. In reliance upon § 1145 of the Bankruptcy Code, the
24 New Common Stock will not be registered under the Securities Act or any state
25 securities laws.

26 **C. Resale of New Common Stock**

27 Any subsequent transfers of the New Common Stock by the holder or holders
28 thereof will need to be exempt from federal and state securities registration

1 requirements under various provisions of the Securities Act, the Bankruptcy Code and
2 applicable state securities laws. The Debtor recommends that the recipient of the New
3 Common Stock consult with his/her/its own legal advisors as to the availability of any
4 such exemption from registration under the Securities Act, the Bankruptcy Code and
5 applicable state securities laws in any given instance and as to any applicable
6 requirements or conditions to such availability.

7 **IX. CERTAIN FEDERAL INCOME TAX CONSEQUENCES**

8 The Federal income tax consequences of the Plan are complex. All Holders of
9 Claims against and Interests in the Debtor should consult with their tax advisors as to
10 the particular tax consequences to them of the plan and the ownership and disposition
11 of Claims including the applicability and effect of any state, local or foreign (non-us)
12 tax laws and of any change in applicable tax laws.

13 **A. United States Federal Income Tax Consequences to Debtor**

14 **1. Cancellation of Indebtedness Income**

15 Under Section 61 of Title 26 of the U.S. Code (the “IRC”), a taxpayer generally
16 must include in gross income the amount of any cancellation of indebtedness income
17 (“**COD income**”) realized during the taxable year. IRC section 108(a)(1)(A) provides
18 an exception to this general rule if the cancellation occurs in a case under the
19 Bankruptcy Code, but only if the taxpayer is under the jurisdiction of the Bankruptcy
20 Court and the cancellation is granted by the Bankruptcy Court or is pursuant to a plan
21 approved by the Bankruptcy Court.

22 IRC section 108(b) requires that any amount of COD income so excluded from
23 gross income to be applied to reduce the following tax attributes of the taxpayer in
24 the following order: (a) any net operating loss (“**NOL**”) for the taxable year of the
25 discharge and any NOL carryforwards to such year; (b) any general business credit
26 carryforwards; (c) any minimum tax credit carryforwards; (d) any capital loss
27 carryforwards; (e) the tax basis of the taxpayer’s depreciable and nondepreciable
28 assets (but not below the amount of its liabilities immediately after the discharge); (f)

any passive activity loss and credit carryforwards; and (g) any foreign tax credit carryforwards. However, a taxpayer can elect under IRC section 108(b)(5) to apply the tax attribute reduction first to reduce the tax basis of its depreciable property (without regard to the amount of its liabilities) and then to reduce its NOLs and other tax attributes. A reduction in tax attributes under the foregoing rules does not occur until the end of the taxable year or, in the case of an asset basis reduction, the first day of the taxable year following the taxable year, in which the COD income is realized. Any excess COD income over the amount of available tax attributes is not subject to United States federal income tax and has no other United States federal income tax impact.

Holders of Claims may receive less than full payment on their Claims. The Debtor's liability to the holders of Claims in excess of the amount satisfied by distributions under the Plan will be discharged. As a result of the discharge of Claims pursuant to the Plan, the Debtor is expected to realize COD. Any COD income that the Debtor realizes as a result of such discharge should be excluded from the Debtor's gross income pursuant to the bankruptcy exception under IRC section 108(a)(1)(A) described in the immediately preceding paragraph. The exclusion of COD income under this exception will result in a reduction of certain tax attributes of the Debtor. The Debtor has not determined whether it will make the election under IRC section 108(b)(5) to apply the COD income to first reduce the basis of depreciable property before reducing other available tax attributes.

2. General Section 382 Annual Limitation

In general, IRC section 382 imposes an annual limitation on the ability of a corporation that undergoes an "ownership change" to deduct pre-change NOLs equal to the product of (i) the fair market value of the corporation's stock immediately before the "ownership change" (with certain adjustments) and (ii) the "long-term tax-exempt rate" (which is the highest of the adjusted federal long-term rates in effect for any month in the three-calendar-month period ending with the calendar month in

1 which the “ownership change” occurs, which is 0.89 percent for September 2020).
2 The section 382 limitation may be increased to the extent the corporation recognizes
3 certain built-in gain in its assets during the five-year period following the “ownership
4 change” or is treated as recognizing built-in gains pursuant to the safe harbors
5 provided in IRS Notice 2003-65, as modified by IRS Notice 2018-30, but only to the
6 extent the corporation has net unrealized built-in gain at the time of the “ownership
7 change”. IRC section 383 applies a similar limitation to capital loss carryforwards and
8 tax credits. Any unused limitation may be carried forward, thereby increasing the
9 annual limitation in the subsequent tax year.

10 Special rules may apply to prevent the imposition of an annual NOL limitation
11 in the case of a corporation that experiences an “ownership change” as the result of a
12 bankruptcy proceeding. Notwithstanding these special rules, though, if following
13 such an “ownership change” a corporation does not continue its historic business, or
14 use a significant portion of its historic business assets in a new business, for two years
15 following the “ownership change”, a second “ownership change” that occurs within
16 that two year period will cause the corporation’s section 382 limitation to be zero.

17 **B. United States Federal Income Tax Consequences to Holders of
18 Claims**

19 **1. Distributions in Discharge of Accrued Interest**

20 In general, to the extent that money or property received by a holder of a Claim
21 is received in satisfaction of interest accrued during its holding period, such amount
22 will be taxable to the holder as interest income (if not previously included in the
23 holder’s gross income). Conversely, such a holder will recognize a deductible loss to
24 the extent any accrued interest or original issue discount (“OID”) that was previously
25 included in such holder’s gross income is not paid in full.

26 Each holder of an Allowed Claim is urged to consult its own tax advisor
27 regarding the allocation of consideration and the deductibility of previously included
28 unpaid interest and OID for tax purposes.

1 **2. Character of Gain or Loss; Tax Basis; Holding Period**

2 The character of any gain or loss as long-term or short-term capital gain or loss
3 or as ordinary income or loss recognized by a holder of Claims under the Plan will be
4 determined by a number of factors, including, but not limited to, the status of the
5 holder, whether the Claim constitutes a capital asset in the hands of the holder, the
6 holder's holding period for the Claim, whether the Claim was acquired at a market
7 discount, and the extent to which the holder previously claimed a deduction for the
8 worthlessness of all or a portion of the Claim. A holder of a Claim that purchased its
9 Claim from a prior holder at a market discount may be subject to the market discount
10 rules of the IRC. Under those rules, assuming that the holder has made no election to
11 amortize the market discount into income on a current basis, any gain recognized on
12 the exchange of its Claim (subject to a de minimis rule) generally would be
13 characterized as ordinary income to the extent of the accrued market discount on such
14 Claim as of the date of the exchange.

15 **3. Limitation on Use of Capital Losses**

16 Holders of Claims that recognize capital losses as a result of payment of their
17 Claims under the Plan will be subject to limits on their use of capital losses. For
18 noncorporate Claim holders, capital losses may be used each year to first offset any
19 capital gains (without regard to holding periods), and any remaining capital loss can
20 be used to offset up to \$3,000 of ordinary income (\$1,500 for married individuals
21 filing separate returns). For corporate Claim holders, losses from the sale or exchange
22 of capital assets may only be used to offset capital gains. Holders of Claims who have
23 more capital losses than can be used in a tax year may be allowed to carry over the
24 excess capital losses for use in succeeding tax years. Noncorporate holders of Claims
25 may carry over unused capital losses and apply them to capital gains and a portion of
26 their ordinary income (see described immediately above) for an unlimited number of
27 years. Corporate Claim holders may only carry over unused capital losses for the five
28

1 years following the capital loss year, but are allowed to carry back unused capital
2 losses to the three years preceding the capital loss year.

3

4 **4. Information Reporting and Backup Withholding**

5 Certain payments, including payments in respect of accrued interest or market
6 discount, are generally subject to information reporting by the payor to the IRS.
7 Moreover, such reportable payments are subject to backup withholding (currently at
8 a rate of 24%) under certain circumstances. Under the IRC's backup withholding
9 rules, a United States holder may be subject to backup withholding at the applicable
10 rate with respect to certain distributions or payments pursuant to the Plan, unless the
11 holder (a) comes within certain exempt categories (which generally include
12 corporations) and, when required, demonstrates this fact or (b) provides a correct
13 United States taxpayer identification number and certifies under penalty of perjury
14 that the holder is a U.S. person, the taxpayer identification number is correct and that
15 the holder is not subject to backup withholding because of a failure to report all
16 dividend and interest income. Backup withholding is not an additional tax. Amounts
17 withheld under the backup withholding rules may be credited against a holder's United
18 States federal income tax liability, and a holder may obtain a refund of any excess
19 amounts withheld under the backup withholding rules by filing an appropriate claim
20 for refund with the IRS.

21 AS INDICATED ABOVE, THE FOREGOING IS INTENDED TO BE A
22 SUMMARY ONLY AND NOT A SUBSTITUTE FOR CAREFUL TAX
23 PLANNING WITH A TAX PROFESSIONAL. THE FEDERAL, STATE, LOCAL
24 AND OTHER TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND, IN
25 SOME CASES, UNCERTAIN. ACCORDINGLY, EACH HOLDER OF A CLAIM
26 OR EQUITY INTEREST IS URGED TO CONSULT SUCH HOLDER'S TAX
27 ADVISORS CONCERNING THE FEDERAL, STATE, LOCAL, AND OTHER
28 TAX CONSEQUENCES APPLICABLE UNDER THE PLAN.

1 **X. CONCLUSION**

2 The Debtor urges holders of Claims in the Voting Classes to vote to accept the
3 Plan and to evidence such acceptance by returning their completed and signed Ballots
4 so they will be received by the Debtor in accordance with the Voting Instructions by
5 the Voting Deadline

6

7 Dated: October 30, 2020 SULLIVAN HILL REZ & ENGEL
8 A Professional Law Corporation

9 By: /s/ Christopher V. Hawkins
10 Christopher V. Hawkins
11 Attorneys for Debtor and Debtor in Possession
12 INGENU, INC.

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EXHIBIT TABLE

Exhibit No.	Description	Pages
A	Chapter 11 Plan of Reorganization	69 - 122
B	Schedule of Claims by Classes	123 - 130
C	Feasibility Projections	131 - 133
D	Liquidation Analysis	134 - 141

Exhibit A

1
2
3
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10 | Counsel for Debtor and Debtor in Possession,
Ingenu, Inc.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

15 In re CASE NO. 20-03779-LT11
16 INGENU, INC. Chapter 11
17 Debtor

REVISED CHAPTER 11 PLAN OF REORGANIZATION FOR THE DEBTOR

Date: December 15, 2020
Time: 9:00 a.m.
Ctrm: Dept. 3, Room 129
United States Bankruptcy Court
325 West F Street
San Diego, CA 92101-6991
Judge: Hon. Laura S. Taylor

TABLE OF CONTENTS

ARTICLE I DEFINED TERMS, RULES OF INTERPRETATION AND COMPUTATION OF TIME.....	5
ARTICLE II TREATMENT OF UNCLASSIFIED CLAIMS.....	20
2.1 Allowed Administrative Expense Claims	20
2.2 Requests for Allowance of Administrative Expense Claims.....	20
2.3 Allowed Priority Tax Claims	21
2.4 Other Provisions Concerning Treatment of Priority Tax Claims	21
2.5 DIP Loan Claim	22
2.6 Payment of Statutory Fees	22
ARTICLE III CLASSES OF CLAIMS AND INTERESTS	22
3.1 Class 1 (Priority Non-Tax Claims)	22
3.2 Class 2 (Pre-Petition First Lien Claim).....	22
3.3 Class 3 (Pre-Petition Second Lien Claim)	22
3.4 Class 4 (Grid Secured Claim)	22
3.5 Class 5 (LFT Secured Claim).....	23
3.6 Class 6 (JBJK Secured Claim)	23
3.7 Class 7 (Gilbert Trust Secured Claim).....	23
3.8 Class 8 (Trilliant Secured Claim).....	23
3.9 Class 9 (Secured Tax Claims).....	23
3.10 Class 10 (Other Secured Claims)	23
3.11 Class 11 (General Unsecured Claims)	23
3.12 Class 12 (Interests).....	23
ARTICLE IV IDENTIFICATION OF IMPAIRED CLASSES AND VOTING CLASSES	23
4.1 Impaired Classes of Claims Entitled to Vote.....	23
4.2 Class Deemed to Accept the Plan	23
4.3 Class Deemed to Reject the Plan	23
4.4 Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code.....	24
ARTICLE V TREATMENT OF CLASSES OF CLAIMS AND INTERESTS	24
5.1 Treatment of Class 1 – Priority Non-Tax Claims	24
5.2 Treatment of Class 2 – Pre-Petition First Lien Claim.....	25
5.3 Treatment of Class 3 – Pre-Petition Second Lien Claim	25
5.4 Treatment of Class 4 – Grid Secured Claim	26
5.5 Treatment of Class 5 – LFT Secured Claim	26
5.6 Treatment of Class 6 – JBJK Secured Claim.....	27

1	5.7	Treatment of Class 7 – Gilbert Trust Secured Claim.....	27
2	5.8	Treatment of Class 8 – Trilliant Secured Claim	27
3	5.9	Treatment of Class 9 – Secured Tax Claims.....	27
4	5.10	Treatment of Class 10 – Other Secured Claims.....	28
5	5.11	Treatment of Class 11 – General Unsecured Claims	28
6	5.12	Treatment of Class 12 – Interests.....	28
		ARTICLE VI MEANS FOR IMPLEMENTATION OF THE PLAN	28
7	6.1	Continued Corporate Existence and Vesting of Assets in the Reorganized Debtor	28
8	6.2	Corporate Action.....	29
9	6.3	Certificate of Incorporation and Bylaws	29
10	6.4	Release of Liens	29
11	6.5	Cancellation of Interests and Authorization and Issuance of New Stock.....	30
12	6.6	The Exit Facility.....	30
13	6.7	Provisions Relating to Post-Confirmation Administration of the Reorganized Debtor.	32
14	6.8	Disbursing Agent	33
15	6.9	Closing of Case	33
16	6.10	Effectuating Documents; Further Transactions	33
17	6.11	Withholding and Reporting Requirements	34
18	6.12	Quarterly Reports and United States Trustee’s Fees	34
19	6.13	Preservation of Causes of Action.....	34
20	6.14	No Liability for Solicitation or Participation.....	35
21	6.15	Exemption from Certain Taxes.....	36
		ARTICLE VII PROVISIONS GOVERNING DISTRIBUTIONS	37
22	7.1	Distributions	37
23	7.2	Distributions of Cash	37
24	7.3	Effective Date Payments	37
25	7.4	Delivery of Distributions and Undeliverable Distributions	37
26	7.5	Time Bar to Cash Payments and Disallowances.....	38
27	7.6	Minimum Distributions	38
28	7.7	Transactions on Business Days.....	38
	7.8	Distributions after Allowance	39
	7.9	Disputed Payments.....	39
	7.10	No Distributions in Excess of Allowed Amount of Claim	39
		ARTICLE VIII PROCEDURES REGARDING DISPUTED CLAIMS	39
	8.1	Objections to Claims.....	39

1	8.2	No Distributions Pending Determination of Allowance of Disputed Claims.....	40
2	8.3	Reserve Accounts for Disputed Claims	40
3	8.4	Investment of Disputed Claims Reserve	40
4	8.5	Allowance and Payment of Disputed Claims	41
5	8.6	Release of Excess Funds from Disputed Claims Reserve	41
6	8.7	Estimation	41
7	ARTICLE IX TREATMENT OF EXECUTORY CONTRACTS		
8	AND UNEXPIRED LEASES.....		42
9	9.1	Rejection of Executory Contracts and Unexpired Leases.....	42
10	9.2	Bar Date for Filing Rejection Claims	43
11	ARTICLE X CONDITIONS PRECEDENT TO EFFECTIVENESS OF THE PLAN		43
12	10.1	Conditions to the Effective Date.....	43
13	10.2	Waiver of Conditions	44
14	ARTICLE XI EFFECT OF CONFIRMATION		44
15	11.1	DISCHARGE OF THE DEBTOR.....	44
16	11.2	INJUNCTION	45
17	11.3	No Waiver of Discharge	46
18	11.4	Binding Effect	46
19	11.5	Term of Injunctions or Stays.....	46
20	11.6	Setoffs	46
21	ARTICLE XII RETENTION OF JURISDICTION		47
22	ARTICLE XIII MISCELLANEOUS PROVISIONS		49
23	13.1	Modification of Plan	49
24	13.2	Extensions of Time	49
25	13.3	Releases and Related Matters.	49
26	13.4	Dissolution of the Committee	51
27	13.5	Default.....	51
28	13.6	Notices.....	52
29	13.7	Choice of Law	53
30	13.8	Captions.....	53

1 INTRODUCTION

2 Ingenu, Inc., a Delaware corporation (the “**Debtor**” or “**Ingenu**”) proposes the
3 following plan of reorganization (the “**Plan**”) for the resolution of the outstanding claims
4 against and equity interests in Ingenu. Ingenu is the proponent of the Plan within the meaning
5 of § 1129 of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*). Reference is made to Ingenu’s
6 disclosure statement, to be filed with the Plan (the “**Disclosure Statement**”), for a discussion
7 of Ingenu’s history, business, results of operations, and for a summary and analysis of the
8 Plan. There also are other agreements and documents (the “**Plan Supplement**”), which will
9 be filed with the Bankruptcy Court, that are referenced in the Plan or the Disclosure
10 Statement and that will be available for review.

11 ARTICLE I

12 DEFINED TERMS, RULES OF INTERPRETATION 13 AND COMPUTATION OF TIME

14 A. **Scope of Definitions**

15 Unless otherwise stated, all terms not defined herein shall have the meaning set forth
16 in the Bankruptcy Code and the Bankruptcy Rules. Where there is a conflict between the
17 defined terms herein and any terms in the Bankruptcy Code or the Bankruptcy Rules, the
18 definitions herein shall control. The following terms when used in the Plan shall have the
19 meanings set forth in this Article.

20 B. **Definitions**

21 **1.1 “Administrative Expense Claim”** means a Claim for costs and expenses of
22 administration allowed under §§ 503(b) or 507(a)(2) of the Bankruptcy Code, including:
23 (a) the actual and necessary costs and expenses incurred after the Petition Date of preserving
24 the Estate and operating the business of the Debtor (such as wages, salaries and payments
25 for inventories, leased equipment and premises); (b) Professional Fee Claims; and (c) all
26 fees and charges assessed against the Estate under chapter 123 of title 28, United States
27 Code, 28 U.S.C. §§ 1911-1930.

28 **1.2 “Allowed”** means, with reference to a Claim:

1 **a.** A Claim that (i) has been listed by the Debtor in its Schedules as other
2 than disputed, contingent or unliquidated; and (ii) is not otherwise a Disputed Claim;

3 **b.** A Claim (i) for which a Proof of Claim or request for payment of
4 Administrative Expense Claim has been filed by the applicable Bar Date or otherwise been
5 deemed timely filed under applicable law; and (ii) that is not otherwise a Disputed Claim;
6 or

7 **c.** A Claim that is allowed: (i) in any Stipulation of Amount and Nature
8 of Claim executed by the Reorganized Debtor and the Claimant on or after the Effective
9 Date; (ii) in any contract, instrument or other agreement entered into in connection with the
10 Plan and, if prior to the Effective Date, approved by the Bankruptcy Court; (iii) pursuant to
11 a Final Order; or (iv) pursuant to the terms of the Plan.

12 **1.3 “Amended Certificate of Incorporation and Bylaws”** means the amended
13 and restated certificate of incorporation and amended and restated bylaws of the
14 Reorganized Debtor, in substantially the form to be included in the Plan Supplement.

15 **1.4 “Asset Sale”** means the sale of all or substantially all of the Debtor’s assets
16 pursuant to Section 363 of the Bankruptcy Code that generates sufficient proceeds to pay in
17 full the DIP Facility Claims, the Pre-Petition First Lien Claim and the Pre-Petition Second
18 Lien Claim.

19 **1.5 “Avoidance Actions”** means Causes of Action held by the Debtor and/or the
20 Estate under §§ 544, 547, 548, 549, 550 or 551 of the Bankruptcy Code.

21 **1.6 “Ballot”** means the form or forms distributed to each holder of an Impaired
22 Claim or Interest entitled to vote on the Plan on which the holder indicates acceptance or
23 rejection of the Plan.

24 **1.7 “Bankruptcy Code”** means Title 11 of the United States Code, 11 U.S.C. §§
25 101-1532, as in effect at the relevant time.

26 **1.8 “Bankruptcy Court”** means the United States Bankruptcy Court, Southern
27 District of California, or any such Court having jurisdiction over the Chapter 11 Case.
28

1 **1.9 “Bankruptcy Rules”** means the Federal Rules of Bankruptcy Procedure, as
2 may be amended and as supplemented by any local bankruptcy rules adopted by the
3 Bankruptcy Court.

4 **1.10 “Bar Date”** means the applicable bar date by which a Proof of Claim must be
5 or must have been filed, as established by an order of the Bankruptcy Court, including the
6 Bar Date Order and the Confirmation Order.

7 **1.11 “Bar Date Order”** means an order of the Bankruptcy Court establishing Bar
8 Dates for Filing Proofs of Claims in the Chapter 11 Case, as the same may be amended,
9 modified or supplemented, and includes the Notice of Chapter 11 Bankruptcy Case issued
10 and served by the Bankruptcy Court on July 29, 2020 as ECF No. 11, pursuant to which the
11 Bar Date for filing a Proof of Claim for a Claim that arose before the Petition Date for non-
12 governmental units is October 5, 2020 and the Bar Date applicable to governmental units is
13 January 25, 2021.

14 **1.12 “Board of Directors”** means that body vested with and having the powers and
15 duties of governing the Reorganized Debtor.

16 **1.13 “Business Day”** means any day, other than a Saturday, Sunday or “legal
17 holiday” (as defined in Bankruptcy Rule 9006(a)).

18 **1.14 “Cash”** means legal tender of the United States of America and equivalents
19 thereof.

20 **1.15 “Causes of Action”** means any and all actions, proceedings, causes of action,
21 suits, accounts, demands, controversies, agreements, promises, rights to legal remedies,
22 rights to equitable remedies, rights to payment, and claims held by the Debtor or the Estate,
23 whether known, unknown, reduced to judgment, not reduced to judgment, liquidated,
24 unliquidated, fixed, contingent, non-contingent, matured, unmatured, disputed, undisputed,
25 secured, or unsecured, and whether asserted or assertable directly or derivatively in law,
26 equity, or otherwise.

27 **1.16 “Chapter 11 Case”** means the above-captioned case commenced under
28 Chapter 11 of the Bankruptcy Code by the Debtor.

1 **1.17** “**Claim**” means a “claim,” as defined in § 101(5) of the Bankruptcy Code,
2 against the Debtor.

3 **1.18** “**Claimant**” means the holder of a Claim.

4 **1.19** “**Class**” means a class of Claims or Interests as that term is used in § 1122 of
5 the Bankruptcy Code.

6 **1.20** “**Committee**” means any statutory official committee of unsecured creditors
7 in the Chapter 11 Case appointed pursuant to § 1102 of the Bankruptcy Code, as such
8 Committee may be reconstituted from time to time.

9 **1.21** “**Confirmation Date**” means the date on which the Bankruptcy Court enters
10 the Confirmation Order on its docket, within the meaning of Bankruptcy Rules 5003 and
11 9021.

12 **1.22** “**Confirmation Hearing**” means the hearing before the Bankruptcy Court,
13 held under § 1128 of the Bankruptcy Code, to consider confirmation of this Plan and related
14 matters, as such hearing may be adjourned or continued from time to time.

15 **1.23** “**Confirmation Order**” means the order entered by the Bankruptcy Court
16 confirming the Plan pursuant to § 1129 of the Bankruptcy Code.

17 **1.24** “**Creditors Account**” means a segregated account established by the
18 Reorganized Debtor for the benefit of the holders of Allowed General Unsecured Claims,
19 which account will be funded from the potential Tax Benefit (defined below) in annual
20 payments during the Measuring Period (defined below) as follows:

21 **a.** The aggregate amount funded by the Reorganized Debtor into the
22 Creditors Account shall not exceed the lesser of (i) \$500,000 or (ii) twenty percent (20%) of
23 the aggregate actual Tax Benefit for the Measuring Period; provided, however, the amount
24 of any annual payment shall not exceed \$100,000 for any year during the Measuring Period.
25 For purposes of the Plan, the “**Tax Benefit**” means any reduction in any liability for income
26 taxes of the Reorganized Debtor and any subsidiaries for a taxable period beginning after
27 December 31, 2020 as a result of any net operating loss carry forward arising in a taxable
28 period ending on or before December 31, 2020 as reduced by any taxable income recognized

1 by the Reorganized Debtor or any subsidiaries to the extent attributable to the Plan (the
2 “NOL”). The Tax Benefit will be computed annually by comparing (i) the actual federal,
3 state and local income tax liability of the Reorganized Debtor for any taxable year during
4 the Measuring Period in which it is able to utilize any such NOL to reduce its taxable income,
5 to (ii) the amount of such income taxes that the Reorganized Debtor would have been
6 required to pay with respect to such taxable year in the absence of such NOL. For purposes
7 of the preceding sentence, any gross income recognized by the Reorganized Debtor as a
8 result of any debt discharged in connection with this Plan shall not be taken into account in
9 determining the Reorganized Debtor’s taxable income for the relevant taxable year and, for
10 the avoidance of doubt, any NOL utilized in the relevant taxable year shall be deemed to be
11 the last deduction taken into account in such taxable year.

12 **b.** The foregoing annual payments will be funded into the Creditors
13 Account within one hundred and twenty (120) days following the end of each taxable period
14 beginning after December 31, 2020 and will continue until the earlier of: (i) the expiration
15 of the applicable carryforward period of the NOL with respect to any such taxable period;
16 (ii) December 31, 2025; or (iii) the date the aggregate payments funded into the Creditors
17 Account is \$500,000 (the “**Measuring Period**”).

18 **c.** The Reorganized Debtor’s ability to make these annual payments
19 depends upon a number of factors, including (i) the Reorganized Debtor’s ability to generate
20 taxable income in the future; (ii) the amount of any taxable income that the Reorganized
21 Debtor generates and timing thereof; (iii) the amount of net operating losses that the
22 Reorganized Debtor is permitted under applicable law and regulations to use in a given year
23 to generate tax savings; (iv) changes in U.S. state or federal tax law or IRS regulations;
24 (v) the occurrence of a change of control or other event that limits or eliminates the amount
25 of NOLs available to the Reorganized Debtor; and (vi) the outcome of an audit by the IRS
26 or state taxing authority challenging the Reorganized Debtor’s tax position with respect to
27 the NOLs.

28

1 d. Because the Reorganized Debtor may later operate through one or more
2 operating subsidiaries, the Reorganized Debtor's ability to make payments under the Plan is
3 dependent on the ability of the Reorganized Debtor's subsidiaries to make distributions to
4 the Reorganized Debtor.

5 e. In the event that the holder of a Claim in Class 11 transfers such
6 claim, the Reorganized Debtor (i) may issue and deliver any distribution under the
7 Plan to the original holder at its address of record on the Record Date, and (ii) shall
8 have no obligations with respect to the transferee.

9 **1.25 "Debt-For-Equity Exchange"** means the receipt by NDJR, pursuant to the
10 terms of this Plan, of the New Common Stock in the Reorganized Debtor in satisfaction of
11 the portion of the Pre-Petition Second Lien Claim that equals the difference (only if a
12 positive value) between (i) the sum of (x) the amount of the Pre-Petition First Lien Claim,
13 (y) the amount of the Pre-Petition Second Lien Claim, and (z) the amount of the DIP Facility
14 Claims minus (ii) the cash consideration disclosed in the highest and best offer received by
15 the Debtor in its Marketing Process described in the Disclosure Statement (such difference,
16 the "**Settled Pre-Petition Second Lien Debt Amount**"). For the purpose of the foregoing
17 calculation, the amount of the Pre-Petition Second Lien Claim satisfied pursuant as the
18 Settled Pre-Petition Second Lien Amount shall be calculated based on the indebtedness
19 owing and incurred under the Pre-Petition Second Lien Claim in a chronological order as it
20 was incurred or arose beginning with the date of creation of the such indebtedness (*i.e.*,
21 starting with the principal amounts extended in years 2014 and 2015 remaining outstanding,
22 plus interest accruals, fees and related expenses in the order incurred on such amounts) prior
23 to taking into account any portion of such indebtedness to the extent deemed related to a
24 later period. For the avoidance of doubt, to the extent the Marketing Process does not lead
25 to any offers or is terminated prior to the Debtor's receiving any offers, (i) the full amount
26 of the Pre-Petition Second Lien Claim will be satisfied through issuance of the New
27 Common Stock pursuant to the Debt-For-Equity Exchange; (ii) the amount of the Settled
28 Pre-Petition Second Lien Debt Amount shall equal the amount of the Allowed Pre-Petition

1 Second Lien Claim; and (iii) the amount of the Non-Settled Pre-Petition Second Lien Debt
2 Amount shall equal zero Dollars (\$0).

3 **1.26 “Debtor”** means Ingenu as a debtor under Chapter 11 of the Bankruptcy Code.

4 **1.27 “DIP Credit Agreement”** means the Senior Secured and Priming
5 Superpriority Debtor-in-Possession Credit Agreement dated as of the Petition Date, by and
6 between the Debtor and the DIP Lender, as such may be amended from time to time.

7 **1.28 “DIP Facility” or “DIP Loan”** means the post-petition financing provided
8 under the DIP Credit Agreement.

9 **1.29 “DIP Lender”** means the NDJR in its capacity as the lender under the DIP
10 Loan.

11 **1.30 “DIP Loan Obligation”** means the principal amount of indebtedness
12 outstanding under the DIP Credit Agreement, accrued interest thereon and any and all unpaid
13 expenses of the DIP Lender including without limitation, outstanding DIP Lender’s
14 attorneys’ fees and expenses.

15 **1.31 “DIP Order”** means the Interim, Final and/or any subsequent orders
16 approving the DIP Loan.

17 **1.32 “DIP Facility Claims”** means all Claims arising under or relating to the DIP
18 Facility, whether pursuant to the DIP Credit Agreement, any other DIP Loan Document, any
19 notes, the DIP Order, or otherwise.

20 **1.33 “Disallowed Claim”** means a Claim or any portion thereof, that (a) has been
21 disallowed by a Final Order, (b) is scheduled at zero or as contingent, disputed or
22 unliquidated and as to which a Bar Date has been established but no Proof of Claim has been
23 timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final
24 Order of the Bankruptcy Court, or (c) is not listed on the Schedules and as to which a Bar
25 Date has been set but no Proof of Claim has been timely filed with the Bankruptcy Court
26 pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court.

27 **1.34 “Disbursing Agent”** means the Reorganized Debtor, or any Person designated
28 by the Reorganized Debtor to serve as disbursing agent under this Plan.

1 **1.35 “Disclosure Statement”** means the disclosure statement (including all
2 exhibits and schedules thereto or referenced therein) that relates to the Plan and has been
3 prepared and distributed by the Debtor, as the same may be amended, modified or
4 supplemented.

5 **1.36 “Disputed Claim”** means a Claim or any portion thereof, that is neither an
6 Allowed Claim nor a Disallowed Claim and includes, without limitation, Claims that (a) (i)
7 have not been listed on the Schedules by the Debtor or have been scheduled at zero or as
8 unknown, contingent, unliquidated or disputed, and (ii) are not the subject of an objection
9 filed in the Bankruptcy Court but as to which the time for filing an objection has not yet
10 expired, (b) that are the subject of a Proof of Claim that differs in nature, amount or priority
11 from the Schedules, or (c) are the subject of an objection filed with the Bankruptcy Court,
12 which objection has not been withdrawn or overruled by a Final Order of the Bankruptcy
13 Court.

14 **1.37 “Effective Date”** means the Business Day on which all conditions set forth in
15 Article X of this Plan have been either satisfied or waived as provided in Section 10.2 of this
16 Plan.

17 **1.38 “Estate”** means the estate created for the Debtor in the Chapter 11 Case
18 pursuant to § 541 of the Bankruptcy Code.

19 **1.39 “Executory Contract” or “Unexpired Lease”** means a contract or lease to
20 which the Debtor is a party that is subject to assumption or rejection under § 365 of the
21 Bankruptcy Code, whether or not listed in the Debtor’s Schedules.

22 **1.40 “Exit Facility”** means a credit facility provided by the Exit Facility Lender to
23 the Reorganized Debtor pursuant to the Exit Financing Agreement. “Exit Facility Amount”
24 means an amount up to one million and No/100 Dollars (\$1,000,000).

25 **1.41 “Exit Facility Amount”** means an amount up to one million and No/100
26 Dollars (\$1,000,000).

27 **1.42 “Exit Facility Lender”** means NDJR in its capacity as the lender under the
28 Exit Financing Agreement.

1 **1.43 “Exit Financing Agreement”** means the credit agreement to be entered into
2 as of the Effective Date by and between the Reorganized Debtor and the Exit Facility Lender.
3 The Exit Financing Agreement shall be on the terms and conditions substantially similar to
4 those of the DIP Credit Agreement and otherwise consistent with the terms set forth in
5 Section 6.6 of the Plan.

6 **1.44 “Final Order”** means an order or judgment of the Bankruptcy Court, or other
7 court of competent jurisdiction, as entered on the docket in the Chapter 11 Case or the docket
8 of any other court of competent jurisdiction, that has not been reversed, stayed, modified or
9 amended, and as to which the time to appeal or seek certiorari or move for a new trial,
10 reargument or rehearing has expired, and no appeal or petition for certiorari or other
11 proceedings for a new trial, reargument or rehearing has been timely filed, or as to which
12 any appeal that has been filed or any petition for certiorari that has been timely filed has
13 been withdrawn or resolved by the highest court to which the order or judgment was
14 appealed or from which certiorari was sought or the new trial, reargument or rehearing shall
15 have been denied or resulted in no modification of such order; provided, however, that the
16 possibility that a motion under Rule 59 or 60 of the Federal Rules of Civil Procedure, or any
17 analogous rule under the Bankruptcy Rules or other rules governing procedure in cases
18 before the Bankruptcy Court, may be filed with respect to such order or judgment shall not
19 cause such order or judgment not to be a Final Order.

20 **1.45 “General Unsecured Claim”** means any Unsecured Claim against the Debtor
21 that arose or is deemed by the Bankruptcy Code or Bankruptcy Court, as the case may be,
22 to have arisen before the Petition Date and that is not an Administrative Expense Claim, DIP
23 Facility Claim, Priority Tax Claim, Priority Non-Tax Claim, or Other Secured Claim, but
24 which includes any claim arising from the rejection of an Executory Contract, and is unpaid
25 as of the Effective Date.

26 **1.46 “Gilbert Trust”** means John S. Gilbert and Barbara J. Gilbert, trustees of the
27 Gilbert Family Trust, dated March 1, 1993.

28

1 **1.47 “Gilbert Trust Secured Claim”** means the Claim of the Gilbert Trust against
2 the Debtor under or pursuant to the Gilbert Trust Subordinated Secured Note.

3 **1.48 “Gilbert Trust Subordinated Secured Note”** means the issued Subordinated
4 Secured Convertible Promissory Note issued by Ingenu to the Gilbert Trust prior to the
5 Petition Date.

6 **1.49 “Grid”** means Grid Partners IIIA, L.P.

7 **1.50 “Grid Secured Claim”** means the Claim of Grid against the Debtor under or
8 pursuant to the Grid Subordinated Secured Notes.

9 **1.51 “Grid Subordinated Secured Notes”** means the issued Subordinated Secured
10 Convertible Promissory Notes issued by Ingenu to Grid prior to the Petition Date.

11 **1.52 “Impaired”** means when used with reference to a Claim or Interest, a Claim
12 or Interest that is “impaired” within the meaning of § 1124 of the Bankruptcy Code.

13 **1.53 “Interest” or “Interests”** means any equity security (as defined in section
14 101(16) of the Bankruptcy Code) in the Debtor and any other rights, options, warrants, stock
15 appreciation rights, phantom stock rights, restricted stock units, performance shares,
16 performance units, redemption rights, repurchase rights, convertible, exercisable or
17 exchangeable securities or other agreements, arrangements or commitments of any character
18 relating to, or whose value is related to, any such interest or other ownership interest in the
19 Debtor.

20 **1.54 “JBJK”** means JBJK Investments, LP.

21 **1.55 “JBJK Secured Claim”** means the Claim of JBJK against the Debtor under
22 or pursuant to the JBJK Subordinated Secured Notes.

23 **1.56 “JBJK Subordinated Secured Notes”** means the issued Subordinated
24 Secured Convertible Promissory Notes issued by Ingenu to JBJK prior to the Petition Date.

25 **1.57 “LFT”** means LFT Capital, LLC.

26 **1.58 “LFT Secured Claim”** means the Claim of LFT against the Debtor under or
27 pursuant to the LFT Subordinated Secured Notes.

1 **1.59 “LFT Subordinated Secured Notes”** means the issued Subordinated Secured
2 Convertible Promissory Notes issued by Ingenu to LFT prior to the Petition Date.

3 **1.60 “Lien” or “Liens”** means a lien, security interest or charge against or interest
4 in property of the Debtor to secure payment of a debt or performance of an obligation owed
5 by the Debtor.

6 **1.61 “NDJR”** means NDJR Grid Partners II, LLC.

7 **1.62 “New Common Stock”** means the shares of common stock of the Reorganized
8 Debtor to be issued on the Effective Date in accordance with Section 6.5 of this Plan.

9 **1.63 “Non-Settled Pre-Petition Second Lien Debt Amount”** means the portion
10 of the Pre-Petition Second Lien Claim that remains unsatisfied after giving effect to the
11 Debt-For-Equity Exchange pursuant to which the Settled Pre-Petition Second Lien Debt
12 Amount is satisfied by the issuance of New Common Stock.

13 **1.64 “Officers”** means those persons chosen by the Board of Directors as the
14 officers who shall perform the executive duties of the Reorganized Debtor.

15 **1.65 “Organizational Documents”** means the bylaws, articles of incorporation,
16 corporate charters, certificates of formation, limited liability agreements or other documents
17 or agreements that govern or affect the corporate formation and governance of the Debtor
18 and the Reorganized Debtor.

19 **1.66 “Ordinary Course Administrative Expense Claims”** means Administrative
20 Expense Claims incurred in the ordinary course of the Debtor’s business.

21 **1.67 “Other Secured Claim”** means any Secured Claim other than a DIP Facility
22 Claim, Pre-Petition First Lien Claim, Pre-Petition Second Lien Claim, Gilbert Trust Claim,
23 Grid Secured Claim, LFT Secured Claim, JBJK Secured Claim, or Trilliant Secured Claim.

24 **1.68 “Person”** means an individual, corporation, partnership, joint venture,
25 association, joint stock company, limited liability company, limited liability partnership,
26 trust, estate, unincorporated organization, governmental unit (as defined in § 101(27) of the
27 Bankruptcy Code), or other entity.

1 **1.69** “**Petition**” means the voluntary petition for relief filed by the Debtor with the
2 Bankruptcy Court on July 27, 2020 under Chapter 11 of the Bankruptcy Code, and any
3 amendments or modifications thereto.

4 **1.70** “**Petition Date**” means the date on which the Debtor filed its petition for relief
5 commencing the Chapter 11 Case.

6 **1.71** “**Plan**” means this Chapter 11 plan of reorganization for the Debtor, either in
7 its present form or as it may be altered, amended, or modified, including all Exhibits thereto.

8 **1.72** “**Plan Supplement**” means the supplement to this Plan filed by the Debtor the
9 Bankruptcy Court on or before the Confirmation Date.

10 **1.73** “**Pre-Petition First Lien Claim**” means the Claim of the Pre-Petition First
11 Lien Lender under its Pre-Petition Senior Loan Documents.

12 **1.74** “**Pre-Petition First Lien Lender**” means Lakefront Associates, LLC in its
13 capacity as the lender under the Pre-Petition Loan Agreement.

14 **1.75** “**Pre-Petition First Lien Loan Agreement**” means the Loan and Security
15 Agreement dated September 21, 2011 by and between Ingenu, as borrower, and Lakefront
16 Associates, LLC, as the successor to the original lender thereunder.

17 **1.76** “**Pre-Petition Second Lien Claim**” means the Claim of the Pre-Petition
18 Second Lien Lender under its Pre-Petition Senior Loan Documents.

19 **1.77** “**Pre-Petition Second Lien Lender**” means NDJR in its capacity as the lender
20 under the Pre-Petition Second Lien Secured Note.

21 **1.78** “**Pre-Petition Second Lien Secured Note**” means the Secured Senior
22 Subordinated Convertible Promissory Note as amended as of June 27, 2017 issued by Ingenu
23 to NDJR.

24 **1.79** “**Pre-Petition Senior Loan Documents**” means the Pre-Petition First Lien
25 Loan Agreement and the Pre-Petition Second Lien Secured Note and the documents and
26 agreements executed or delivered in connection therewith, respectively.

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1 **1.80 “Pre-Petition Senior Lenders”** means, collectively, the Pre-Petition First
2 Lien Lender and Pre-Petition Second Lien Lender, each in its capacity as the lender under
3 its respective Pre-Petition Senior Loan Documents.

4 **1.81 “Priority Non-Tax Claim”** means a Claim that is entitled to priority in
5 payment pursuant to § 507(a) of the Bankruptcy Code that is not an Administrative Expense
6 Claim, a DIP Facility Claim or a Priority Tax Claim.

7 **1.82 “Priority Tax Claim”** means a Claim that is entitled to priority in payment
8 pursuant to § 507(a)(8) of the Bankruptcy Code.

9 **1.83 “Professional”** means any professional employed in the Chapter 11 Case
10 pursuant to §§ 327, 328, or 1103 of the Bankruptcy Code or any professional or other entity
11 seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case
12 pursuant to § 503(b)(4) of the Bankruptcy Code.

13 **1.84 “Professional Fee Claim”** means a Claim under §§ 328, 330(a), 331, 333, 503
14 or 1103 of the Bankruptcy Code for compensation of a Professional or other Person for
15 services rendered or expenses incurred in the Chapter 11 Case.

16 **1.85 “Proof of Claim”** means Official Form 10 as is used in the Bankruptcy Court
17 or similar filing as evidence of a Claim, properly filled-out, executed with supporting
18 documentation, and filed with the Bankruptcy Court before any applicable Bar Date.

19 **1.86 “Property”** means all assets or property of the Estate of any nature
20 whatsoever, real or personal, tangible or intangible, including contract rights, accounts and
21 Causes of Action (whether direct or derivative), previously or now owned by Ingenu or the
22 Reorganized Debtor, as the case may be, or acquired by the Estate, as defined in § 541 of
23 the Bankruptcy Code.

24 **1.87 “Pro Rata”** means when used with reference to a distribution to holders of
25 Allowed Claims in a particular Class or other specified group of Claims pursuant to Article
26 V of the Plan, proportionately so that with respect to a particular Allowed Claim in such
27 Class, the ratio of (a)(i) the amount of Cash distributed on account of such Allowed Claim
28 to (ii) the amount of such Allowed Claim, is the same as the ratio of (b)(i) the amount of

1 Cash distributed on account of all Allowed Claims in such Class or group of Claims to (ii)
2 the amount of all Allowed Claims in such Class or group of Claims.

3 **1.88 “Record Date”** shall mean means the date for determining which holders of
4 Allowed Claims and Interests are eligible to receive distributions pursuant to the Plan, which
5 date shall be the Effective Date.

6 **1.89 “Rejection Claim”** shall have the meaning ascribed thereto in Section 9.1 of
7 the Plan.

8 **1.90 “Reorganized Debtor”** means Ingenu on and after the Effective Date.

9 **1.91 “Schedules”** means the schedules of the Debtor’s assets and liabilities and the
10 statement of financial affairs filed by the Debtor, as required by § 521 of the Bankruptcy
11 Code, as the same may have been or may be amended, modified or supplemented.

12 **1.92 “Secured” or “Secured Claim”** means a Claim: (a) secured by a valid,
13 perfected, and enforceable Lien on collateral to the extent of the value of such collateral, as
14 determined in accordance with section 506(a) of the Bankruptcy Code or (b) subject to a
15 valid right of setoff pursuant to section 553 of the Bankruptcy Code.

16 **1.93 “Secured Tax Claim”** means a Claim that would otherwise meet the
17 description of an unsecured Claim of a governmental unit under § 507(a)(8) of the
18 Bankruptcy Code but is secured by a Lien on property in which the Estate has an interest, to
19 the extent of the value of the Claimant’s interest in the Estate’s interest in such property.

20 **1.94 “Settled Pre-Petition Second Lien Debt Amount”** has the meaning assigned
21 thereto in the definition of “Debt-For-Equity Exchange”.

22 **1.95 “Stipulation of Amount and Nature of Claim”** means a stipulation or other
23 agreement between the Debtor or the Reorganized Debtor and a Claimant, or an agreed order
24 of the Bankruptcy Court, establishing the amount and nature of a Claim.

25 **1.96 “Trilliant”** means Trilliant Networks (Canada) Inc.

26 **1.97 “Trilliant Contract”** mean the Value Added Reseller Agreement dated
27 October 28, 2015, by and between the Debtor and Trilliant, as amended on November 23,
28 2017 and on March 1, 2018.

1 **1.98 “Trilliant Secured Claim”** means the Claim of Trilliant against the Debtor
2 under or pursuant to the Trilliant Subordinated Secured Notes.

3 **1.99 “Trilliant Subordinated Secured Notes”** means the issued Subordinated
4 Secured Convertible Promissory Notes issued by Ingenu to Trilliant prior to the Petition
5 Date.

6 **1.100 “Unclassified Claims”** means those Claims described in Article II of this Plan.

7 **1.101 “Unimpaired”** means, when used with reference to a Claim, a Claim that is
8 not Impaired.

9 **1.102 “United States Trustee”** means the United States Trustee for the Southern
10 District of California.

11 **1.103 “Unsecured Claim”** means any Claim that is not a Secured Claim.

12 **C. Rules of Interpretation**

13 For purposes of the Plan, unless otherwise provided herein: (a) whenever from the
14 context it is appropriate, each term, whether stated in the singular or the plural, will include
15 both the singular and the plural; (b) unless otherwise provided in the Plan, any reference in
16 the Plan to a contract, instrument, release or other agreement or document being in a
17 particular form or on particular terms and conditions means that such document will be
18 substantially in such form or substantially on such terms and conditions; (c) any reference
19 in the Plan to an existing document or Exhibit filed or to be filed means such document or
20 Exhibit, as it may have been or may be amended, modified or supplemented pursuant to the
21 Plan, the Confirmation Order or otherwise; (d) any reference to a Person as a holder of a
22 Claim includes that Person’s successors, assigns and affiliates; (e) all references in the Plan
23 to Sections, Articles and Exhibits are references to Sections, Articles and Exhibits of or to
24 the Plan; (f) the words “herein,” “hereunder” and “hereto” refer to the Plan in its entirety
25 rather than to a particular portion of the Plan; (g) captions and headings to Articles and
26 Sections are inserted for convenience of reference only and are not intended to be a part of
27 or to affect the interpretation of the Plan; (h) subject to the provisions of any contract, articles
28 of incorporation, bylaws, similar constituent documents, instrument, release or other

1 agreement or document entered into or delivered in connection with the Plan, the rights and
2 obligations arising under the Plan will be governed by, and construed and enforced in
3 accordance with, federal law, including the Bankruptcy Code and the Bankruptcy Rules; and
4 (i) the rules of construction set forth in § 102 of the Bankruptcy Code will apply to the extent
5 not inconsistent with any other provision of this Section 1(C).

D. Computation of Time

In computing any period of time prescribed or allowed by the Plan, the provisions of
Bankruptcy Rule 9006(a) will apply.

ARTICLE II

TREATMENT OF UNCLASSIFIED CLAIMS

11 **2.1 Allowed Administrative Expense Claims.** Subject to the provisions
12 contained in Section 2.2 of this Plan, unless otherwise agreed to in writing by the
13 Reorganized Debtor and the holder of an Allowed Administrative Expense Claim, the
14 Disbursing Agent shall pay to each holder of an Allowed Administrative Expense Claim an
15 amount equal to its Allowed Administrative Expense Claim on the latest of (a) the Effective
16 Date or as soon thereafter as is practicable, (b) for Ordinary Course Administrative Expense
17 Claims, when such Claims are due and payable in the ordinary course of the Debtor's
18 business, (c) thirty (30) days after the date on which such Administrative Expense Claim
19 becomes an Allowed Administrative Expense Claim by the entry of a Final Order, and (d)
20 the date the Reorganized Debtor is otherwise obligated to pay such Administrative Expense
21 Claim in accordance with the terms and provisions of the particular transactions giving rise
22 to such Claim, the terms and provisions of this Plan and any orders of the Bankruptcy Court
23 relating thereto.

24 **2.2 Requests for Allowance of Administrative Expense Claims.** Except as
25 expressly set forth to the contrary in this Plan, each Person, including each Professional,
26 shall file an application for an allowance of an Administrative Expense Claim in conformity
27 with the following Subsections:

1 **a. Professionals.** All Professionals shall file a final application for the
2 allowance of a Professional Fee Claim on or before forty (40) days following the Effective
3 Date. Objections to any Professional Fee Claim must be filed and served on the Reorganized
4 Debtor, counsel for the Committee, the UST and the requesting Professional no later than
5 twenty (20) days after the filing of the applicable application for allowance of the
6 Professional Fee Claim.

7 **b. Other Administrative Expense Claimants.** All holders of
8 Administrative Expense Claims other than Professionals shall file a request for payment of
9 an Administrative Expense Claim with the Bankruptcy Court on or before forty (40) days
10 following the Effective Date. Holders of Administrative Expense Claims, including such
11 Persons asserting a Claim under § 503(b)(9) of the Bankruptcy Code, who do not file a
12 request for payment by such deadline shall be forever barred from asserting such Claims
13 against the Debtor, the Reorganized Debtor or their respective property and assets (whether
14 cash or otherwise). Notwithstanding the foregoing, holders of Ordinary Course
15 Administrative Expense Claims do not need to file with the Bankruptcy Court a request for
16 payment of an Administrative Expense Claim, but rather may be paid in the ordinary course.

17 **2.3 Allowed Priority Tax Claims.** Pursuant to § 1129(a)(9)(C) of the Bankruptcy
18 Code, unless otherwise agreed in writing by the holder of a Priority Tax Claim and the
19 Reorganized Debtor, each holder of an Allowed Priority Tax Claim shall be paid a value, as
20 of the Effective Date, equal to the unpaid portion of such Allowed Priority Tax Claim in
21 equal quarterly cash payments beginning on the final day of the first full quarter after the
22 Effective Date and ending five years after the Petition Date.

23 **2.4 Other Provisions Concerning Treatment of Priority Tax Claims.**
24 Notwithstanding the provisions of Section 2.3 of the Plan, the holder of an Allowed Priority
25 Tax Claim will not be entitled to receive any payment on account of any penalty arising with
26 respect to or in connection with the Allowed Priority Tax Claim, except as Allowed under
27 § 507(a)(8)(G) of the Bankruptcy Code. Other than as Allowed under § 507(a)(8)(G) of the
28 Bankruptcy Code, any such Claim or demand for any such penalty (i) will be subject to

1 treatment in Class 12 pursuant to § 726(a)(4) of the Bankruptcy Code and (ii) the holder of
2 an Allowed Priority Tax Claim will not assess or attempt to collect such penalty from the
3 Reorganized Debtor or its property.

2.5 DIP Loan Claim. The DIP Facility Claims shall be deemed to be Allowed Claims including all principal, accrued and accruing postpetition interest, costs, fees and expenses. In full and final satisfaction, settlement, release, and discharge of the Allowed DIP Facility Claims, and except to the extent the DIP Lender agrees to a less favorable treatment, on the Effective Date or as soon as reasonably practicable thereafter, the DIP Facility Claims shall be paid in full in Cash by the Reorganized Debtor with proceeds from the Exit Facility.

2.6 Payment of Statutory Fees. All fees due and payable pursuant to section 1930 of title 28 of the United States Code prior to the Effective Date shall be paid in full in Cash by the Debtor on the Effective Date. After the Effective Date, the Reorganized Debtor shall pay any and all such fees when due and payable in accordance with Section 6.12 hereof.

ARTICLE III

CLASSES OF CLAIMS AND INTERESTS

16 All Claims and Interests, except Administrative Expense Claims and Priority Tax
17 Claims, are placed in the following Classes. In accordance with § 1123(a)(1) of the
18 Bankruptcy Code, Administrative Expense Claims, Priority Tax Claims and Claims for
19 statutory fees have not been classified and thus are excluded from the following Classes.

20 **3.1 Class 1 (Priority Non-Tax Claims)** shall consist of all Priority Non-Tax
21 Claims.

22 **3.2 Class 2 (Pre-Petition First Lien Claim)** shall consist of the Claim of the Pre-
23 Petition First Lien Lender under its Pre-Petition Senior Loan Documents.

24 **3.3 Class 3 (Pre-Petition Second Lien Claim)** shall consist of the Claim of the
25 Pre-Petition Second Lien Lender under its Pre-Petition Senior Loan Documents.

26 **3.4 Class 4 (Grid Secured Claim)** shall consist of the Grid Secured Claim, *i.e.*,
27 the Claim of Grid under the Grid Subordinated Secured Notes.

3.5 Class 5 (LFT Secured Claim) shall consist of the Claim of the LFT Secured Claim, *i.e.*, the LFT under the LFT Subordinated Secured Notes.

3.6 Class 6 (JBJK Secured Claim) shall consist of the JBJK Secured Claim, *i.e.*, the Claim of JBJK under the JBJK Subordinated Secured Notes.

3.7 Class 7 (Gilbert Trust Secured Claim) shall consist of the Gilbert Trust Secured Claim, *i.e.*, the Claim of Gilbert Trust under the Gilbert Trust Subordinated Secured Note.

3.8 Class 8 (Trilliant Secured Claim) shall consist of the Trilliant Secured Claim, *i.e.*, the Claim of Trilliant under the Trilliant Subordinated Secured Notes.

10 | **3.9 Class 9 (Secured Tax Claims)** shall consist of all Secured Tax Claims.

3.10 Class 10 (Other Secured Claims) shall consist of all Other Secured Claims.

12 **3.11 Class 11 (General Unsecured Claims)** shall consist of all General Unsecured
13 Claims against the Debtor.

14 | 3.12 Class 12 (Interests) shall consist of all Interests in the Debtor.

ARTICLE IV

IDENTIFICATION OF IMPAIRED CLASSES AND VOTING CLASSES

17 **4.1 Impaired Classes of Claims Entitled to Vote.** Holders of Claims or Interests
18 in each Impaired Class are entitled to vote as a Class to accept or reject this Plan, other than
19 Classes that are deemed to accept or reject this Plan as provided in Sections 4.2 and 4.3
20 herein. Accordingly, the votes of holders of Claims or Interests in Classes 2 through 8 and
21 Classes 10 through 11 shall be solicited with respect to this Plan.

22 **4.2 Class Deemed to Accept the Plan.** Classes 1 and 9 are Unimpaired by this
23 Plan. Accordingly, under § 1126(f) of the Bankruptcy Code, holders of Claims in these
24 Classes are conclusively deemed to have accepted this Plan, and the votes of such holders
25 will not be solicited.

4.3 Class Deemed to Reject the Plan. Holders of Interests in Class 12 are not receiving or retaining any property under the Plan on account of such Interests and,

1 therefore, are conclusively deemed to have rejected the Plan. Accordingly, holders of
2 Interests in Class 12 are not entitled to vote on the Plan.

3 **4.4 Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code.** To the
4 extent that any Impaired Class entitled to vote rejects the Plan or is deemed to have rejected
5 the Plan, the Debtor will request confirmation of this Plan, as it may be amended or modified
6 from time to time, under § 1129(b) of the Bankruptcy Code.

7 **4.5** The Plan treats Secured Claims that are junior to the Pre-Petition Second Lien
8 Claim held by NDJR (Class 3)—specifically the Grid Secured Claim (Class 4), LFT Secured
9 Claim Class 5), JBJK Secured Claim (Class 6), Gilbert Trust Secured Claim (Class 7),
10 Trilliant Secured Claim (Class 8) and Other Secured Claims Class 10)—as Unsecured Claims
11 (Class 11) on the grounds that the allowed amount of the Pre-Petition Second Lien Claim
12 exceeds the aggregate value of the Debtor’s assets. Such treatment is dependent on the Court
13 determining, pursuant to the motion being separately filed by the Debtor pursuant to Section
14 506(a) of the Bankruptcy Code and Bankruptcy Rule 3012, that the secured claims of each
15 of the Grid Secured Claim (Class 4), LFT Secured Claim Class 5), JBJK Secured Claim
16 (Class 6), Gilbert Trust Secured Claim (Class 7), Trilliant Secured Claim (Class 8) and Other
17 Secured Claims Class 10) are all valued at zero dollars (\$0) (the ‘Lien Stripping Motion’).”

18 ARTICLE V

19 TREATMENT OF CLASSES OF CLAIMS AND INTERESTS

20 **5.1 Treatment of Class 1 – Priority Non-Tax Claims.** Unless otherwise agreed
21 in writing by the Reorganized Debtor and the holder of an Allowed Priority Non-Tax Claim,
22 each holder of an Allowed Priority Non-Tax Claim will receive an amount equal to its
23 Allowed Priority Non-Tax Claim on the latest of (a) the Effective Date or as soon thereafter
24 as is practicable, (b) 30 days after the date on which such Priority Non-Tax Claim becomes
25 an Allowed Priority Non-Tax Claim by the entry of a Final Order, and (c) the date the
26 Reorganized Debtor is otherwise obligated to pay such Allowed Priority Non-Tax Claim in
27 accordance with the terms and provisions of the particular transactions giving rise to such

1 Claim, the terms and provisions of this Plan and any orders of the Bankruptcy Court relating
2 thereto.

3 **5.2 Treatment of Class 2 – Pre-Petition First Lien Claim.** Notwithstanding any
4 provisions of the Plan to the contrary, the Pre-Petition First Lien Secured Claim will be
5 deemed Allowed, without offset, counterclaim or defense of any kind, in an amount equal
6 to: (a) \$86,366.69 on account of outstanding obligations as of the Petition Date, plus (b) all
7 other Obligations under, and as defined in, the Pre-Petition First Lien Loan Agreement,
8 including, without limitation, accrued and unpaid interest at the contract rate set forth in the
9 Pre-Petition First Lien Loan Agreement through and including the Effective Date and the
10 reasonable fees and expenses of counsel for the Pre-Petition First Lien Lender. In full and
11 final satisfaction, settlement, release, and discharge of the Allowed Pre-Petition First Lien
12 Claim, except to the extent that the Debtor or Reorganized Debtor, as applicable, and the
13 holder of the Allowed Pre-Petition First Lien Claim agree to a less favorable treatment of
14 such Claim, on the Effective Date or as soon as reasonably practicable thereafter, the holder
15 of the Allowed Pre-Petition First Lien Claim shall receive the following treatment: the
16 amount of the Allowed Pre-Petition First Lien Claim shall be reduced to the principal
17 amount portion of the Pre-Petition First Lien Claim in the amount specified in clause (a) of
18 this Section 5.2 and the Reorganized Debtor shall pay such amount in Cash to the Pre-
19 Petition First Lien Lender from the proceeds of the Exit Facility, with any balance of such
20 Claim on account of the amount of the items set forth in clause (b) of this Section 5.2 to be
21 discharged.

22 **5.3 Treatment of Class 3 – Pre-Petition Second Lien Claim.** Notwithstanding
23 any provisions of the Plan to the contrary, the Pre-Petition Second Lien Secured Claim will
24 be deemed Allowed, without offset, counterclaim or defense of any kind, in an amount equal
25 to: (a) \$16,273,098.82 on account of outstanding obligations as of the Petition Date, plus
26 (b) all other Obligations under, and as defined in, the Pre-Petition Second Lien Secured
27 Note, including, without limitation, accrued and unpaid interest at the contract rate set forth
28 in the Pre-Petition Second Lien Secured Note through and including the Effective Date and

1 the reasonable fees and expenses of counsel for the Pre-Petition Second Lien Lender. On the
2 Effective Date, the holder of the Allowed Pre-Petition Second Lien Claim shall receive the
3 following treatment: (i) the portion of the Pre-Petition Second Lien Claim equal to the
4 Settled Pre-Petition Second Lien Debt Amount shall be fully and finally satisfied, settled,
5 released and discharged through the receipt by the Pre-Petition Second Lien Lender of the
6 New Common Stock in the Reorganized Debtor pursuant to the Debt-For-Equity Exchange
7 as provided for in the Plan, and (ii) with respect to the Non-Settled Pre-Petition Second Lien
8 Debt Amount, the holder of the Pre-Petition Second Lien Claim shall retain such Claim to
9 the extent of such amount and the Reorganized Debtor shall continue to be liable for such
10 Claim to the extent of the Non-Settled Pre-Petition Second Lien Debt Amount in accordance
11 with the Pre-Petition Senior Loan Documents governing the Pre-Petition Second Lien Claim
12 (as may be modified by the holder of the Pre-Petition Second Lien Claim and the
13 Reorganized Debtor), subject to the following: (i) the maturity date for the repayment of the
14 Non-Settled Pre-Petition Second Lien Debt Amount shall be the fifth (5th) anniversary of the
15 Effective Date; (ii) interest shall accrue on the principal amount of such Claim at the non-
16 default rate of six and a half percent (6.5%) per annum, which interest, rather than being
17 paid in Cash, may be (at the option of the Reorganized Debtor) capitalized and added to the
18 principal amount of the Claim; (iii) the holder of the Pre-Petition Second Lien Claim shall
19 retain its Liens securing such Claims to the extent of the Non-Settled Pre-Petition Second
20 Lien Debt Amount; and (iv) any defaults that existed with respect to such Claim as of the
21 Petition Date shall be deemed cured.

22 **5.4 Treatment of Class 4 – Grid Secured Claim.** Subject to the Court's
23 determination of the Lien Stripping Motion, the Class 4 Grid Secured Claim shall be deemed
24 to be an Unsecured Claim and shall be treated as a Class 11 General Unsecured Claim, in
25 which case the holder of such Claim shall receive in full and final satisfaction, settlement,
26 release, and discharge of such Claim the treatment of a Class 11 General Unsecured Claim.

27 **5.5 Treatment of Class 5 – LFT Secured Claim.** Subject to the Court's
28 determination of the Lien Stripping Motion, the Class 5 LFT Secured Claim shall be deemed

1 to be an Unsecured Claim and shall be treated as a Class 11 General Unsecured Claim, in
2 which case the holder of such Claim shall receive in full and final satisfaction, settlement,
3 release, and discharge of such Claim the treatment of a Class 11 General Unsecured Claim.

4 **5.6 Treatment of Class 6 – JBJK Secured Claim.** Subject to the Court’s
5 determination of the Lien Stripping Motion, the Class 6 JBJK Secured Claim shall be
6 deemed to be an Unsecured Claim and shall be treated as a Class 11 General Unsecured
7 Claim, in which case the holder of such Claim shall receive in full and final satisfaction,
8 settlement, release, and discharge of such Claim the treatment of a Class 11 General
9 Unsecured Claim.

10 **5.7 Treatment of Class 7 – Gilbert Trust Secured Claim.** Subject to the Court’s
11 determination of the Lien Stripping Motion, the Class 7 Gilbert Trust Secured Claim shall
12 be deemed to be an Unsecured Claim and shall be treated as a Class 11 General Unsecured
13 Claim, in which case the holder of such Claim shall receive in full and final satisfaction,
14 settlement, release, and discharge of such Claim the treatment of a Class 11 General
15 Unsecured Claim.

16 **5.8 Treatment of Class 8 – Trilliant Secured Claim.** Subject to the Court’s
17 determination of the Lien Stripping Motion, the Class 8 Trilliant Secured Claim shall be
18 deemed to be an Unsecured Claim and shall be treated as a Class 11 General Unsecured
19 Claim, in which case the holder of such Claim shall receive in full and final satisfaction,
20 settlement, release, and discharge of such Claim the treatment of a Class 11 General
21 Unsecured Claim.

22 **5.9 Treatment of Class 9 – Secured Tax Claims.** Pursuant to § 1129(a)(9)(D) of
23 the Bankruptcy Code, unless otherwise agreed in writing by the holder of a Secured Tax
24 Claim and the Reorganized Debtor, each holder of an Allowed Secured Tax Claim shall
25 retain the Lien securing its Allowed Secured Tax Claim and shall be paid a value as of the
26 Effective Date equal to the unpaid portion of such Allowed Secured Tax Claim in equal
27 quarterly Cash payments beginning on the final day of the first full quarter after the Effective
28 Date and ending five years after the Petition Date.

5.10 Treatment of Class 10 – Other Secured Claims. Subject to the Court’s determination of the Lien Stripping Motion, each Class 10 Other Secured Claim shall be deemed to be an Unsecured Claim and shall be treated as a Class 11 General Unsecured Claim, in which case the holder of such Claim shall receive in full and final satisfaction, settlement, release, and discharge of such Claim the treatment of a Class 11 General Unsecured Claim.

7 **5.11 Treatment of Class 11 – General Unsecured Claims** Each holder of an
8 Allowed Class 11 General Unsecured Claim shall receive, on account of such Allow Claim,
9 distributions from the Creditors Account on a Pro Rata basis. In the event that the Debtor
10 does not achieve profitability within the five-year Measuring Period, then no Tax Benefit
11 will be realized by the Debtor; the Debtor will have no obligation to fund the Creditors
12 Account; and holders of Class 11 claims will receive no distributions under the Plan. No
13 interest, penalty, or late charge is to be allowed on any Claim for the purpose of computing
14 the distributions to the holders of Allowed General Unsecured Claims. For each year during
15 the Measuring period, the Debtor will either (i) make distributions required under the Plan,
16 or (ii) if no distributions are required under the Plan, provide notice of that fact to all holder
17 of Claims in Class 11 who file in the Chapter 11 Case and serve on the Debtor or the
18 Reorganized Debtor, as applicable, a request for notice, no later than December 31 of the
19 following year.

20 **5.12 Treatment of Class 12 – Interests.** On the Effective Date, the Interests in the
21 Debtor shall be discharged, cancelled, released, and extinguished as of the Effective Date
22 and holders of Interests in the Debtor shall neither receive any distributions nor retain any
23 property under this Plan for or on account of such Interests.

ARTICLE VI

MEANS FOR IMPLEMENTATION OF THE PLAN

6.1 Continued Corporate Existence and Vesting of Assets in the Reorganized Debtor. As of the Effective Date, the Reorganized Debtor shall exist as a corporate entity in accordance with applicable law pursuant to its Amended Certificate of Incorporation and

1 Bylaws. Except as otherwise provided in this Plan, on and after the Effective Date, all
2 Property of the Estate, including all claims, rights and Causes of Action, shall vest in the
3 Reorganized Debtor free and clear of all Claims, Liens, charges, other encumbrances, and
4 Interests. On and after the Effective Date, the Reorganized Debtor may operate its business
5 and may use, acquire, and dispose of Property and compromise or settle any Claims without
6 supervision of or approval of the Bankruptcy Court free and clear of any restrictions of the
7 Bankruptcy Code or the Bankruptcy Rules, other than restrictions expressly imposed by this
8 Plan or the Confirmation Order. Without limiting the foregoing, the Reorganized Debtor
9 may pay the charges that it incurs on or after the Effective Date for professional fees,
10 disbursements, expenses or related support services without application to the Bankruptcy
11 Court.

12 **6.2 Corporate Action.** Each of the matters provided for under this Plan involving
13 the corporate structure of the Debtor or corporate action to be taken by or required of the
14 Debtor, shall, as of the Effective Date, be deemed to have occurred and be effective as
15 provided herein, and shall be authorized, approved and, to the extent taken prior to the
16 Effective Date, ratified in all respects without any requirement of further action by
17 shareholders, creditors, officers or directors of the Debtor or the Reorganized Debtor.

18 **6.3 Certificate of Incorporation and Bylaws.** On the Effective Date or as soon
19 thereafter as is practicable, the Reorganized Debtor shall file with the Secretary of State of
20 the State of Delaware, in accordance with the Delaware General Corporation Law, the
21 Amended Certificate of Incorporation and Bylaws. The Amended Certificate of
22 Incorporation and Bylaws shall become the Amended Certificate of Incorporation and
23 Bylaws of the Reorganized Debtor. The Amended Certificate of Incorporation and Bylaws
24 for the Reorganized Debtor shall be included in the Plan Supplement.

25 **6.4 Release of Liens.** Except as otherwise provided in this Plan or in any contract,
26 instrument, release or other agreement or document entered into or delivered in connection
27 with this Plan, on the Effective Date and upon payment as provided in this Plan, all
28 mortgages, deeds of trust, Liens or other security interests against the property of the Estate

1 vesting in the Reorganized Debtor will be fully released and discharged. The Reorganized
2 Debtor shall be authorized to file or record on behalf of creditors such Uniform Commercial
3 Code termination statements, real property releases or reconveyances, or other documents
4 or instruments as may be necessary to implement the provisions of this Section 6.4. For the
5 avoidance of doubt, the Pre-Petition Second Lien Claim to the extent of the Non-Settled Pre-
6 Petition Second Lien Debt Amount are not released under the Plan.

7 **6.5 Cancellation of Interests and Authorization and Issuance of New Stock.**

8 a. On or as soon as reasonably practicable after the Effective Date, the
9 Reorganized Debtor shall issue the New Common Stock to be distributed to NDJR pursuant
10 to the Plan without any further act or action by any other party under applicable law,
11 regulation, order or rule. The issuance of the New Common Stock and the distribution
12 thereof under the Plan shall be exempt from registration under the Securities Act of 1933,
13 the Bankruptcy Code and applicable state securities laws. All documents, agreements and
14 instruments entered into, on or as of the Effective Date contemplated by or in furtherance of
15 the Plan, including the Exit Financing Agreement and any other agreement entered into in
16 connection with the foregoing, shall become effective and binding in accordance with their
17 respective terms and conditions upon the parties thereto.

18 b. All of the shares of New Common Stock issued pursuant to the Plan
19 shall be duly authorized, validly issued, and if applicable, fully paid and non-assessable.

20 **6.6 The Exit Facility.**

21 a. On the Effective Date and simultaneously with the vesting of the
22 Debtor's assets in the Reorganized Debtor, the Reorganized Debtor shall enter into the Exit
23 Financing Agreement with the Exit Facility Lender and any related documents required by
24 the Exit Facility Lender. Confirmation of the Plan shall be deemed to constitute approval of
25 the Exit Facility and the Exit Facility documents and, subject to the occurrence of the
26 Effective Date, authorization for the Reorganized Debtor to enter into and perform its
27 obligations in connection with the Exit Facility without the need for any further action.

1 **b.** The main terms of the Exit Facility shall be as of the Effective Date as
2 follows:

- 3 i. A multiple draw term loan in the principal amount of Exit
4 Facility Amount.
- 5 ii. The maturity date of the Exit Facility shall be the fifth (5th)
6 anniversary of the Effective Date.
- 7 iii. The non-default interest rate shall be five percent (5%) per
8 annum, and the default rate shall accrue upon the occurrence of
9 an event of default thereunder shall be seven percent (7%) per
10 annum.
- 11 iv. The Exit Facility shall be secured by first priority Liens on, and
12 security interests in, all of the Reorganized Debtor's right, title
13 and interest, both legal and equitable, in real and personal
14 property, tangible and intangible, wherever located and however
15 acquired, subject to the terms of the Exit Facility documents.

16 **c.** On the Effective Date, the Exit Facility documents shall constitute
17 legal, valid, binding, and authorized obligations of the Reorganized Debtor and the non-
18 Debtor parties to the Exit Facility documents, enforceable in accordance with their terms.
19 Pursuant to the Plan, the financial accommodations to be extended pursuant to the Exit
20 Facility documents are being extended, and shall be deemed to have been extended, in good
21 faith, for legitimate business purposes, are reasonable, shall not be subject to avoidance,
22 recharacterization, or subordination (including equitable subordination) for any purposes
23 whatsoever, and shall not constitute preferential transfers, fraudulent conveyances, or other
24 voidable transfers under the Bankruptcy Code or any other applicable non-bankruptcy law.

25 **d.** The Liens securing the Reorganized Debtor's obligations under the Exit
26 Facility shall constitute first priority perfected liens and security interests on all of the
27 tangible, real and personal, assets of Reorganized Debtor to the extent provided in the Exit
28 Facility documents (subject to only the Liens securing the Non-Settled Pre-Petition Second

1 Lien Debt Amount). On the Effective Date, all of the Liens securing the Exit Facility
2 (1) shall be legal, binding, and enforceable Liens on, and security interests in, the collateral
3 granted thereunder in accordance with the terms of the Exit Facility documents, (2) shall be
4 deemed automatically perfected on the Effective Date, and (3) shall not be subject to
5 avoidance, recharacterization, or subordination (including equitable subordination) for any
6 purposes whatsoever and shall not constitute preferential transfers, fraudulent conveyances,
7 or other voidable transfers under the Bankruptcy Code or any applicable non-bankruptcy
8 law.

9 e. The Reorganized Debtor and the entities granted such Liens and
10 security interests are authorized to make all filings and recordings, and to obtain all
11 governmental approvals and consents necessary to establish and perfect such Liens and
12 security interests under the provisions of the applicable state, provincial, federal, or other
13 law (whether domestic or foreign) that would be applicable in the absence of the Plan and
14 the Confirmation Order (it being understood that perfection shall occur automatically by
15 virtue of the entry of the Confirmation Order, and any such filings, recordings, approvals,
16 and consents shall not be required), and will thereafter cooperate to make all other filings
17 and recordings that otherwise would be necessary under applicable law to give notice of
18 such Liens and security interests to third parties.

19 **6.7 Provisions Relating to Post-Confirmation Administration of the**
20 **Reorganized Debtor.**

21 a. **Board of Directors.** As of the Effective Date, the Board of Directors
22 shall be the governing body of the Reorganized Debtor until such time as a shareholders'
23 meeting occurs pursuant to the Organizational Documents or applicable non-bankruptcy
24 law, and shall assume the governance of the Reorganized Debtor including, but not limited
25 to, determining who shall serve as the Reorganized Debtor's Officers, supervisors, managers
26 and executive employees.

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1 **b. Identity of Board of Directors.** On the Effective Date, the term of the
2 current members of the board of directors of the Debtor, if any, will expire. The identity of
3 the initial members of the Board of Directors shall be included in the Plan Supplement.

4 **c. Other Provisions.** Other provisions governing the service, term and
5 continuance in office of the members of the Board of Directors shall be set forth in the
6 Organizational Documents of the Reorganized Debtor.

7 **6.8 Disbursing Agent.** On the Effective Date, the Reorganized Debtor shall have
8 the authority to serve as, or appoint, the Disbursing Agent to carry out the duties set forth in
9 this Plan. The Reorganized Debtor shall have the authority to replace the Disbursing Agent
10 at any time, with or without cause, subject to the terms of any agreement between the
11 Reorganized Debtor and the Disbursing Agent. The Reorganized Debtor shall file any
12 agreement with the Disbursing Agent with the Bankruptcy Court and serve such agreement
13 on the United States Trustee.

14 **6.9 Closing of Case.** If, after the Effective Date, the Chapter 11 Case is closed,
15 such closing, (a) shall not alter, amend, revoke, or supersede the terms of this Plan, (b) shall
16 not affect any rights of the Debtor, the holders of Claims or Interests or the treatment of any
17 other Person under this Plan, (c) shall continue to cause the terms of this Plan to remain
18 binding on all Persons, (d) shall cause all orders of the Bankruptcy Court to remain in full
19 force and effect, and (e) shall cause the Bankruptcy Court to retain all jurisdiction set forth
20 in Article XII of this Plan.

21 **6.10 Effectuating Documents; Further Transactions.** The chief executive
22 officer, the chief financial officer, chairman of the Debtor's board of directors or any other
23 executive officer of the Debtor shall be authorized to execute, deliver, file, or record such
24 contracts, instruments, and other agreements or documents, and take such actions as may be
25 necessary or appropriate to effectuate and further evidence the terms and conditions of this
26 Plan. The secretary or assistant secretary of the Debtor shall be authorized to certify or attest
27 to any of the foregoing actions.

1 **6.11 Withholding and Reporting Requirements.** In connection with this Plan, the
2 Reorganized Debtor shall (a) comply with all applicable withholding and reporting
3 requirements imposed by any federal, state or local taxing authority; (b) timely file all tax
4 returns as required by law to be filed; (c) be authorized to engage accountants or such other
5 professionals to prepare and file all tax returns as required by law to be filed; (d) take such
6 other actions as are reasonably necessary, including the allocation of sufficient funds, to file
7 such returns; and (e) shall timely pay all taxes arising under any requirements or tax returns
8 applicable to this Plan.

9 **6.12 Quarterly Reports and United States Trustee's Fees.** The Reorganized
10 Debtor shall have the obligation to file quarterly reports in the format prescribed by the
11 United States Trustee and pay the United States Trustee's fees required to be paid pursuant
12 to 28 U.S.C. § 1930(a)(6), which obligation shall end upon entry of a final decree or other
13 order closing the Chapter 11 Case.

14 **6.13 Preservation of Causes of Action.**

15 **a. Vesting of Causes of Action.** In accordance with § 1123(b) of the
16 Bankruptcy Code, except as otherwise provided in this Plan, the Reorganized Debtor shall
17 retain and may enforce all rights to commence and pursue, as appropriate, any and all claims
18 and Causes of Action held by the Debtor and/or the Estate, whether arising before or after
19 the Petition Date. All such claims and Causes of Action, along with all rights, interests and
20 defenses related thereto, shall vest with the Reorganized Debtor.

21 **b. Reservation of Causes of Action.** Unless any Cause of Action against
22 a Person is expressly waived, relinquished, exculpated, released, compromised or settled in
23 this Plan or a Final Order, and except as to the Pre-Petition Senior Lenders, the Debtor and
24 the Reorganized Debtor specifically reserve all Causes of Action, for later adjudication.
25 Therefore, no preclusion doctrine, estoppel (judicial, equitable or otherwise) or laches shall
26 apply to any of the Causes of Action upon, after or as a consequence of the confirmation,
27 the Effective Date or consummation of this Plan. Without limiting the foregoing, the Causes
28 of Action reserved under the Plan include the Causes of Action disclosed in the Debtor's

1 Schedules against (i) Trilliant (breach of contract regarding license agreement; breach of
2 contract for failure to purchase promissory notes pursuant to its letter agreement with the
3 Debtor to purchase promissory notes issued by the Debtor); (ii) Vula Telematix (Pty) Ltd.
4 (nonpayment for 3 years, breach of contract, damages in the amount of \$41,000);
5 (iii) rpmaNetworks aka MEC Telematik FZ LLC corporation (unpaid licenses, breach of
6 contract, damages in the amount of \$8 million); (iv) Wuxi Jiuzhou Communications
7 Technology Co., Ltd (nonpayment, breach of contract, damages in the amount of \$384,754);
8 (v) Totum Labs (<https://totumlabs.com/>) for patent infringement and (vi) the Debtor's
9 former officers and directors, including John Horn and Ted Myers, for breaches of fiduciary
10 duties, negligence, misappropriation and related claims; (vi) RPMA International Corp
11 (triggered escrow release without cause and nonpayment, breach of contract, damages in the
12 amount of \$7,808); (vii) JBJK (breach of contract for failure to purchase promissory notes
13 pursuant to its note and warrant purchase agreement with the Debtor to purchase promissory
14 notes issued by the Debtor) and (viii) LFT (breach of contract for failure to purchase
15 promissory notes pursuant to its note and warrant purchase agreement with the Debtor to
16 purchase promissory notes issued by the Debtor). In addition, the Causes of Action reserved
17 under the Plan included any Causes of Action regarding any transfers disclosed in the
18 Debtor's Statement of Financial Affairs ("SOFA"), including Avoidance Actions.

19 **c. Preservation of Defensive Use of Causes of Action.** Whether or not
20 any Cause of Action is pursued or abandoned, the Debtor and the Reorganized Debtor
21 reserve their rights to use any such Cause of Action defensively, including for the purposes
22 of asserting a setoff or recoupment, or to object to all or part of any Claim pursuant to §
23 502(d) of the Bankruptcy Code or otherwise.

24 **d. Discretion to Pursue or Settle.** The Reorganized Debtor shall have
25 discretion to pursue or not to pursue, to settle or not to settle, to try or not to try, and/or to
26 appeal or not to appeal all Causes of Action.

27 **6.14 No Liability for Solicitation or Participation.**

1 As specified in § 1125(e) of the Bankruptcy Code, Persons that solicit acceptances or
2 rejections of the Plan and/or that participate in the offer, issuance, sales, or purchase of
3 securities offered or sold under the Plan, in good faith and in compliance with the applicable
4 provisions of the Bankruptcy Code, shall not be liable, on account of such solicitation or
5 participation, for violation of any applicable law, rule, or regulation governing the
6 solicitation of acceptances or rejections of the Plan or the offer, issuance, sale, or purchase
7 of securities.

8 **6.15 Exemption from Certain Taxes.**

9 Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property
10 pursuant hereto, including the Exit Facility liens and any transfer from a Debtor to a
11 Reorganized Debtor or to any Person pursuant to, in contemplation of, or in connection with
12 this Plan, shall not be subject to any stamp tax, recording tax, personal property tax, real
13 estate transfer tax, sales tax, use tax, privilege tax, or other similar tax or governmental
14 assessment in the United States, and the Confirmation Order shall direct and be deemed to
15 direct the appropriate federal, state or local government officials or agents to forgo the
16 collection of any such tax or governmental assessment and to accept for filing and
17 recordation instruments or other documents pursuant to such transfers of property without
18 the payment of any such tax or governmental assessment. Such exemption specifically
19 applies, without limitation, to (1) the creation of any mortgage, deed of trust, lien or other
20 security interest; (2) the assuming and assigning of any contract, lease or sublease; (3) any
21 transaction authorize by this Plan; (4) any sale of an asset by the Reorganized Debtor in
22 furtherance of the Plan, including but not limited to any sale of personal or real property;
23 and (5) the making or delivery of any deed or other instrument of transfer under, in
24 furtherance of or in connection with this Plan.

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ARTICLE VII

PROVISIONS GOVERNING DISTRIBUTIONS

3 **7.1 Distributions.** Subject to Bankruptcy Rule 9010, all distributions under this
4 Plan shall be made by the Disbursing Agent pursuant to the terms and conditions contained
5 in this Plan.

7.2 Distributions of Cash. All distributions of Cash to be made by the Disbursing Agent pursuant to this Plan shall be made by a check or wire transfer from the Disbursing Agent's account maintained in accordance with this Plan.

9 **7.3 Effective Date Payments.** On or as soon as practicable after the Effective
10 Date, the New Common Stock shall issue as described in this Plan. For the first year in which
11 funds are deposited into the Creditors Account, the Disbursing Agent shall make the initial
12 distributions as soon as practicable thereafter (the “**Initial Distribution Date**”) to those
13 entitled to distribution in accordance with the terms and provisions of the Plan. For each
14 year thereafter, if and when funds are deposited in the Creditors Account for such year, the
15 Disbursing Agent shall make distributions as soon as practicable thereafter (a “**Subsequent
16 Distribution Date**”) to those entitled to distribution in accordance with the terms and
17 provisions of the Plan.

7.4 Delivery of Distributions and Undeliverable Distributions. Distributions to the holder of an Allowed Claim or Interest shall be made at the address of such holder as set forth on the Schedules unless superseded by the address as set forth on the Proof of Claim filed by such holder or by a written notice to the Disbursing Agent providing actual knowledge to the Disbursing Agent of a change of address. If any holder's distribution is returned as undeliverable, no further distributions to such holder shall be made unless and until the Disbursing Agent is notified in writing within six months of the distribution date of such holder's then current address, at which time all distributions shall be made to such holder, without interest. All claims for undeliverable distributions shall be made within six months after the date such undeliverable distribution was initially made. If any claim for an undeliverable distribution is not timely made as provided herein, such claim shall be forever

1 barred with prejudice. After such date, all unclaimed property (a) shall be applied first to
2 satisfy the costs of administering and fully consummating this Plan, then shall be transferred
3 to the Reorganized Debtor and available to be used for general corporate purposes, including
4 working capital, and (b) the holder of any such Claim or Interest shall not be entitled to any
5 other or further distribution under this Plan on account of such undeliverable distribution or
6 such Claim or Interest.

7 **7.5 Time Bar to Cash Payments and Disallowances.** Checks issued by the
8 Disbursing Agent in respect of Allowed Claims shall be void if not negotiated within three
9 months after the date of issuance thereof. Requests for reissuance of any check shall be made
10 to the Disbursing Agent by the holder of the Allowed Claim to whom such check originally
11 was issued, on or before the expiration of three months following the date of issuance of
12 such check. After such date, (a) all funds held on account of such void check shall be applied
13 first to satisfy the costs of administering and fully consummating this Plan, then will be
14 available to the Reorganized Debtor to be used for general corporate purposes, including
15 working capital, (b) the Claim of the holder of any such void check shall be disallowed, and
16 (c) such Claimant shall not be entitled to any other or further distribution on account of such
17 Claim.

18 **7.6 Minimum Distributions.** If a distribution to be made to a holder of an
19 Allowed Claim on any Distribution Date would be \$25.00 or less, notwithstanding any
20 contrary provision of this Plan, no distribution will be made to such Claimant. In addition,
21 no fractional shares of New Common Stock shall be distributed and no Cash shall be
22 distributed in lieu of such fractional amounts.

23 **7.7 Transactions on Business Days.** If the Effective Date or any other date on
24 which a transaction, event or act may occur or arise under this Plan shall occur on Saturday,
25 Sunday or other day that is not a Business Day, the transaction, event or act contemplated
26 by this Plan to occur on such day shall instead occur on the next day which is a Business
27 Day.

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7.8 Distributions after Allowance. Distributions to each holder of a Disputed Claim, to the extent that such Claim ultimately becomes Allowed or estimated for distribution purposes, shall be made in accordance with the provisions of the Plan governing the Class of Claims to which such holder belongs.

7.9 Disputed Payments. If any dispute arises as to the identity of a holder of an Allowed Claim who is to receive any distribution, the Disbursing Agent may, in lieu of making such distribution to such Person, make such distribution into an escrow account until the disposition thereof shall be determined by the Bankruptcy Court or by written agreement among the interested parties to such dispute.

7.10 No Distributions in Excess of Allowed Amount of Claim. Notwithstanding anything to the contrary herein, no holder of an Allowed Claim shall receive in respect of such Claim any distribution in excess of the Allowed amount of such Claim.

ARTICLE VIII

PROCEDURES REGARDING DISPUTED CLAIMS

8.1 Objections to Claims.

16 a. The Reorganized Debtor shall have the exclusive right to object to
17 Claims after the Effective Date including, but not limited to, objections regarding the
18 allowance, classification or amount of Claims, subject to the procedures and limitations set
19 forth in this Plan, the Bankruptcy Rules, and the Bankruptcy Code; provided, however, that
20 the deadline for the Reorganized Debtor to file objections to Claims shall be one hundred
21 eighty (180) days after the Effective Date, unless further extended by the Bankruptcy Court
22 upon notice to all creditors and holders of equity interests requesting notice pursuant to
23 Bankruptcy Rule 2002. All such objections shall be litigated to a Final Order except to the
24 extent the Reorganized Debtor, in its sole discretion, elects to withdraw any such objection
25 or compromise, settle or otherwise resolve any such objection, in which event the
26 Reorganized Debtor may settle, compromise or otherwise resolve any Disputed Claim
27 without approval of the Bankruptcy Court.

1 **b.** Unless any objection to a Claim is expressly waived, relinquished,
2 released, compromised or settled in this Plan or a Final Order, the Debtor and the
3 Reorganized Debtor specifically reserve all such objections, including without limitation
4 objections to the amount or validity of any Claim. The Debtor has not yet completed its
5 analysis into and investigation of the Claims and objections thereto. Accordingly, no
6 preclusion doctrine, estoppel (judicial, equitable or otherwise) or laches shall apply to any
7 objection to any Claim upon, after or as a consequence of the confirmation, the Effective
8 Date or consummation of this Plan.

9 **8.2 No Distributions Pending Determination of Allowance of Disputed**
10 **Claims.** No distributions shall be made under this Plan on account of any Disputed Claim,
11 unless and until such Claim becomes an Allowed Claim.

12 **8.3 Reserve Accounts for Disputed Claims.** On or prior to the Initial Distribution
13 Date and each Subsequent Distribution Date, the Disbursing Agent shall reserve Cash in an
14 aggregate amount sufficient to pay each holder of a Disputed Claim (a) the amount of Cash
15 that such holder would have been entitled to receive under this Plan if such Claim had been
16 an Allowed Claim on such Distribution Date or (b) such lesser amount as the Bankruptcy
17 Court may estimate or may otherwise order (the “**Disputed Claims Reserve**”).

18 **8.4 Investment of Disputed Claims Reserve.** The Disbursing Agent shall be
19 permitted, from time to time, to invest all or a portion of the Cash in the Disputed Claims
20 Reserve in United States Treasury Bills (or in a fund that invests substantially all of its assets
21 in United States Treasury securities), interest-bearing certificates of deposit, tax exempt
22 securities or investments permitted by § 345 of the Bankruptcy Code, with the concurrence
23 of the Board of Directors or as otherwise authorized by the Bankruptcy Court, using prudent
24 efforts to enhance the rates of interest earned on such Cash without inordinate risk. All
25 interest earned on such Cash shall be held in the Disputed Claims Reserve and, after
26 satisfaction of any expenses incurred in connection with the maintenance of the Disputed
27 Claims Reserve, including taxes payable on such interest income, if any, shall be transferred
28 out of the Disputed Claims Reserve and shall be retained the Reorganized Debtor.

1 **8.5 Allowance and Payment of Disputed Claims.** If, on or after the Effective
2 Date, any Disputed Claim becomes an Allowed Claim, the Disbursing Agent shall, within
3 thirty (30) days after the date on which such Disputed Claim becomes an Allowed Claim or
4 as soon thereafter as is practicable, distribute from the Disputed Claims Reserve to the holder
5 of such Allowed Claim the amount of distributions that such holder would have been entitled
6 to receive under this Plan if such Claim had been an Allowed Claim on the Effective Date.

7 **8.6 Release of Excess Funds from Disputed Claims Reserve.** If at any time or
8 from time to time after the Effective Date, there shall be Cash in the Disputed Claims
9 Reserve in an amount in excess of the amount which the Disbursing Agent is required at
10 such time to reserve on account of Disputed Claims under this Plan or pursuant to any order
11 of the Bankruptcy Court, the Disbursing Agent may release such funds from the Disputed
12 Claims Reserve to the Reorganized Debtor.

13 **8.7 Estimation.** The Debtor or the Reorganized Debtor, as the case may be, may,
14 at any time, request that the Bankruptcy Court estimate any Disputed Claim pursuant to
15 § 502(c) of the Bankruptcy Code regardless of whether the Debtor or the Reorganized
16 Debtor, as the case may be, have previously objected to such Claim, and the Bankruptcy
17 Court will retain jurisdiction to estimate any Claim at any time, including during litigation
18 concerning any objection to such Claim. In the event that the Bankruptcy Court estimates
19 any Disputed Claim, that estimated amount may constitute either the Allowed amount of
20 such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court.
21 If the estimated amount constitutes a maximum limitation on such Claim, the Debtor or the
22 Reorganized Debtor, as the case may be, may elect to pursue any supplemental proceedings
23 to object to any ultimate payment of such Claim. All of the aforementioned Claims
24 objection, estimation and resolution procedures are cumulative and not necessarily exclusive
25 of one another. On and after the Confirmation Date, Claims that have been estimated
26 subsequently may be compromised, settled, withdrawn or otherwise resolved without further
27 order of the Bankruptcy Court as provided in Section 8.1 of this Plan.

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ARTICLE IX

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

9.1 Rejection of Executory Contracts and Unexpired Leases. Except as otherwise provided in the Confirmation Order, pursuant to §§ 365(a) and 1123(b)(2) of the Bankruptcy Code, all remaining Executory Contracts and Unexpired Leases that exist between the Debtor and any Person shall be deemed rejected as of the Effective Date, except for any Executory Contract or Unexpired Lease (i) that has been assumed, assumed and assigned or rejected pursuant to an order of the Bankruptcy Court entered prior to the Effective Date, (ii) as to which a motion for approval of the assumption, assumption and assignment or rejection has been filed (including a motion seeking an order authorizing, but not directing, the Debtor to assume, assume and assign, or reject such Executory Contract or Unexpired Lease) prior to the Effective Date, or (iii) agreed to be excluded from such rejection pursuant to stipulation with the Debtor or the Reorganized Debtor. or (iv) that is identified on the Plan Supplement as being excluded from such rejection. Any claims arising from the rejection of an Executory Contract or Unexpired Lease (“**Rejection Claims**”) shall be classified in Class 11 under this Plan. For the avoidance of doubt, the foregoing shall apply to the Trilliant Contract to the extent a determination is made that, contrary to the Debtor’s position, the Debtor’s termination of the Trilliant Contract prior to the Petition Date was not effective, in which case the Trilliant Contract shall either (1) be deemed rejected pursuant to the Plan, and Trilliant may assert continued rights in the Debtor’s intellectual property under section 365(n) of the Bankruptcy Code, or (2) be the subject of continued litigation regarding whether the Trilliant Contract is subject to termination as a result of pre-petition and continuing breaches, and the consequences of such termination. For further avoidance of doubt, (a) the Debtor asserts that it effectively terminated the Trilliant Contract prior to the Petition Date based on certain breaches by Trilliant (the ‘Pre-Petition Termination’), and therefore, the Trilliant Contract is not an Executory Contract; (b) Trilliant contends that the purported Pre-Petition Termination was ineffective as the Trilliant Contract required

1 a 60-day notice and cure period; (c) the Debtor contends that such notice and cure
2 period was inapplicable as certain of Trilliant's breaches were and are incurable; (d)
3 Trilliant disputes that such notice and cure period was inapplicable because certain of
4 Trilliant's breaches were allegedly incurable; (e) Trilliant commenced Adversary
5 Proceeding No. 20-90108 seeking a judicial determination of this and other related
6 issues; (f) the Debtor reserves the right to assert that existing breaches, and/or other
7 and further breaches, give rise to the right to terminate the Trilliant Contract even if
8 the Pre-Petition Termination was not effective (the "Post-Petition Termination"); and
9 (g) Trilliant reserves all rights to dispute such purported Post-Petition Termination.

10 **9.2 Bar Date for Filing Rejection Claims.** A Proof of Claim asserting a Rejection
11 Claim shall be filed with the Bankruptcy Court on or before the fortieth (40th) day after the
12 Effective Date or be forever barred from assertion of any Rejection Claim against and
13 payment from the Reorganized Debtor.

ARTICLE X

CONDITIONS PRECEDENT TO EFFECTIVENESS OF THE PLAN

16 **10.1 Conditions to the Effective Date.** The Effective Date will not occur, and the
17 Plan will not be consummated unless and until the following conditions have been satisfied
18 or duly waived pursuant to Section 10.2 of this Plan:

19 a. The Confirmation Order, with the Plan and all exhibits and annexes to
20 each, in form and substance reasonably acceptable to the Debtor and the Exit Facility
21 Lender, shall have been entered by the Bankruptcy Court, and shall be a Final Order, and no
22 request for revocation of the Confirmation Order under § 1144 of the Bankruptcy Code shall
23 have been made, or, if made, shall remain pending; provided, however, that if the
24 Confirmation Order has not become a Final Order because a notice of appeal has been timely
25 filed and the parties are not stayed or enjoined from consummating the Plan, this Section
26 10.1(a) shall be deemed satisfied;

1 **b.** All actions, documents and agreements necessary to implement this
2 Plan shall be in form and substance reasonably satisfactory to the Exit Facility Lender and
3 the Debtor and shall have been effected or executed as applicable; and

4 **c.** The Exit Facility Lender and the Debtor shall have executed the Exit
5 Financing Agreement.

6 **10.2 Waiver of Conditions.** The conditions set forth in Section 10.1 of this Plan
7 may be waived by the Debtor and the Exit Facility Lender, without any notice to any other
8 parties-in-interest or the Bankruptcy Court and without a hearing.

9 **ARTICLE XI**

10 **EFFECT OF CONFIRMATION**

11 **11.1 DISCHARGE OF THE DEBTOR.** PURSUANT TO § 1141(D) OF THE
12 BANKRUPTCY CODE AND, EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED
13 IN THIS PLAN OR IN THE CONFIRMATION ORDER, THE RIGHTS AFFORDED
14 AND THE PAYMENTS AND DISTRIBUTIONS TO BE MADE AND THE
15 TREATMENT UNDER THE PLAN SHALL BE IN COMPLETE EXCHANGE FOR,
16 AND IN FULL AND UNCONDITIONAL SETTLEMENT, SATISFACTION,
17 DISCHARGE, AND RELEASE OF ANY AND ALL EXISTING DEBTS AND CLAIMS
18 AND TERMINATION OF ALL INTERESTS OF ANY KIND, NATURE, OR
19 DESCRIPTION WHATSOEVER AGAINST OR IN THE DEBTOR, THE
20 REORGANIZED DEBTOR, THEIR PROPERTY, THE DEBTOR'S ASSETS, OR THE
21 ESTATE, AND SHALL EFFECT A FULL AND COMPLETE RELEASE, DISCHARGE,
22 AND TERMINATION OF ALL LIENS, SECURITY INTERESTS, OR OTHER CLAIMS,
23 INTERESTS, OR ENCUMBRANCES UPON ALL OF THE DEBTOR'S ASSETS AND
24 PROPERTY. FURTHER, ALL PERSONS ARE PRECLUDED FROM ASSERTING,
25 AGAINST THE DEBTOR OR THE REORGANIZED DEBTOR OR THEIR
26 RESPECTIVE SUCCESSORS, OR ANY PROPERTY THAT IS TO BE DISTRIBUTED
27 UNDER THE TERMS OF THE PLAN, ANY CLAIMS, OBLIGATIONS, RIGHTS,
28 CAUSES OF ACTION, LIABILITIES, OR INTERESTS BASED UPON ANY ACT,

1 OMISSION, TRANSACTION, OR OTHER ACTIVITY OF ANY KIND OR NATURE
2 THAT OCCURRED PRIOR TO THE EFFECTIVE DATE, OTHER THAN AS
3 EXPRESSLY PROVIDED FOR IN THE PLAN, OR THE CONFIRMATION ORDER,
4 WHETHER OR NOT (A) A PROOF OF CLAIM BASED UPON SUCH DEBT IS FILED
5 OR DEEMED FILED UNDER § 501 OF THE BANKRUPTCY CODE; (B) A CLAIM
6 BASED UPON SUCH DEBT IS ALLOWED; OR (C) THE CLAIMANT BASED UPON
7 SUCH DEBT HAS ACCEPTED THE PLAN.

8 **11.2 INJUNCTION.** EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR
9 THE CONFIRMATION ORDER, ALL CLAIMANTS AND HOLDERS OF INTERESTS
10 ARISING PRIOR TO THE EFFECTIVE DATE SHALL BE PERMANENTLY BARRED
11 AND ENJOINED FROM ASSERTING AGAINST THE REORGANIZED DEBTOR OR
12 THE DEBTOR, OR THEIR SUCCESSORS OR PROPERTY, OR THE DEBTOR'S
13 ASSETS, ANY OF THE FOLLOWING ACTIONS ON ACCOUNT OF SUCH CLAIM OR
14 INTEREST: (I) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION
15 OR OTHER PROCEEDING ON ACCOUNT OF SUCH CLAIM AGAINST OR
16 INTEREST IN THE REORGANIZED DEBTOR, THE DEBTOR, OR THE PROPERTY
17 TO BE DISTRIBUTED UNDER THE TERMS OF THE PLAN, OTHER THAN TO
18 ENFORCE ANY RIGHT TO DISTRIBUTION WITH RESPECT TO SUCH PROPERTY
19 UNDER THE PLAN; (II) ENFORCING, ATTACHING, COLLECTING, OR
20 RECOVERING IN ANY MANNER ANY JUDGMENT, AWARD, DECREE, OR ORDER
21 AGAINST THE REORGANIZED DEBTOR, THE DEBTOR OR ANY OF THE
22 PROPERTY TO BE DISTRIBUTED UNDER THE TERMS OF THE PLAN, OTHER
23 THAN AS PERMITTED UNDER SUB-PARAGRAPH (I) ABOVE; (III) CREATING,
24 PERFECTING, OR ENFORCING ANY LIEN OR ENCUMBRANCE AGAINST
25 PROPERTY OF THE REORGANIZED DEBTOR, THE DEBTOR, OR ANY PROPERTY
26 TO BE DISTRIBUTED UNDER THE TERMS OF THE PLAN; (IV) ASSERTING ANY
27 RIGHT OF SETOFF, SUBROGATION, OR RECOUPMENT OF ANY KIND,
28 DIRECTLY OR INDIRECTLY, AGAINST ANY OBLIGATION DUE THE DEBTOR,

1 THE REORGANIZED DEBTOR, THEIR ASSETS OR ANY OTHER PROPERTY OF
2 THE DEBTOR, THE REORGANIZED DEBTOR, OR ANY DIRECT OR INDIRECT
3 TRANSFeree OF ANY PROPERTY OF, OR SUCCESSOR IN INTEREST TO, ANY OF
4 THE FOREGOING PERSONS; AND (V) ACTING OR PROCEEDING IN ANY
5 MANNER, IN ANY PLACE WHATSOEVER, THAT DOES NOT CONFORM TO, OR
6 COMPLY WITH, THE PROVISIONS OF THE PLAN. THE FOREGOING DISCHARGE,
7 RELEASE AND INJUNCTION ARE AN INTEGRAL PART OF THE PLAN AND ARE
8 ESSENTIAL TO ITS IMPLEMENTATION. THE DEBTOR AND THE REORGANIZED
9 DEBTOR SHALL HAVE THE RIGHT TO INDEPENDENTLY SEEK THE
10 ENFORCEMENT OF THE DISCHARGE, RELEASE AND INJUNCTION SET FORTH
11 IN THIS ARTICLE XI.

12 **11.3 No Waiver of Discharge.** Except as otherwise specifically provided herein,
13 nothing in the Plan shall be deemed to waive, limit, or restrict in any way the discharge
14 granted to the Debtor upon confirmation of the Plan by § 1141 of the Bankruptcy Code.

15 **11.4 Binding Effect.** As of the Effective Date, this Plan shall be binding upon and
16 inure to the benefit of the Debtor, the Reorganized Debtor, all Claimants and holders of
17 Interests, other parties-in-interest and their respective heirs, successors, and assigns.

18 **11.5 Term of Injunctions or Stays.** Unless otherwise provided in this Plan, all
19 injunctions or stays provided for in the Chapter 11 Case pursuant to §§ 105 or 362 of the
20 Bankruptcy Code, or otherwise, and in effect on the Confirmation Date, shall remain in full
21 force and effect until the Effective Date, at which time they are replaced with the injunction
22 set forth in Section 11.1 of the Plan.

23 **11.6 Setoffs.** Except with respect to Claims specifically Allowed under the Plan,
24 the Debtor or the Reorganized Debtor, as applicable, may, but shall not be required to, set
25 off against any Claim, and the payments or other distributions to be made pursuant to this
26 Plan in respect of such Claim, claims of any nature whatsoever that the Debtor may have
27 against such Claimant; but neither the failure to do so nor the allowance of any Claim

hereunder shall constitute a waiver or release by the Debtor or the Reorganized Debtor of any such claim that the Debtor or the Reorganized Debtor may have against such Claimant.

ARTICLE XII

RETENTION OF JURISDICTION

Following the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction of all matters arising under, arising out of, or related to, the Chapter 11 Case, this Plan and the Confirmation Order pursuant to, and for the purposes of, §§ 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

9 a. to determine the allowance or classification of Claims and to hear and
10 determine any objections thereto;

11 **b.** to determine any and all motions, adversary proceedings, applications,
12 contested matters and other litigated matters under the Bankruptcy Code or arising in or
13 related to the Chapter 11 Case that may be pending in the Bankruptcy Court on, or initiated
14 after, the Effective Date;

15 c. to enter and implement such orders as may be appropriate in the event
16 the Confirmation Order is for any reason stayed, revoked, modified, or vacated;

17 d. to issue such orders in aid of the execution, implementation and
18 consummation of this Plan to the extent authorized by § 1142 of the Bankruptcy Code or
19 otherwise;

20 e. to construe and take any action to enforce this Plan;

21 f. to reconcile any inconsistency in any order of the Bankruptcy Court,
22 including, without limitation, the Confirmation Order;

23 g. to modify this Plan pursuant to § 1127 of the Bankruptcy Code, or to
24 remedy any apparent non-material defect or omission in this Plan, or to reconcile any non-
25 material inconsistency in this Plan so as to carry out its intent and purposes;

26 h. to hear and determine all applications for compensation and
27 reimbursement of expenses of Professionals under §§ 328(a), 330, 331, 333, 503(b) or 1103
28 of the Bankruptcy Code;

- 1 i. to determine any requests for payment of Priority Tax Claims, Priority
2 Non-Tax Claims or Administrative Expense Claims;
- 3 j. to hear and determine disputes arising in connection with the
4 interpretation, implementation, or enforcement of this Plan;
- 5 k. to consider and act on the compromise and settlement or payment of
6 any Claim against the Debtor, the Reorganized Debtor or the Estate;
- 7 l. to recover all assets of the Debtor and property of the Estate, wherever
8 located;
- 9 m. to hear and determine Causes of Action brought by the Reorganized
10 Debtor; provided, however, that nothing in the retention of jurisdiction under this clause (m)
11 shall be construed as a determination that the Bankruptcy Court has or does not have
12 jurisdiction to hear and determine any Causes of Action;
- 13 n. to determine all questions and disputes regarding title and/or ownership
14 to the assets of the Debtor, the Reorganized Debtor or the Estate;
- 15 o. to issue injunctions, enter and implement other orders or to take such
16 other actions as may be necessary or appropriate to restrain interference by any Person with
17 consummation, implementation or enforcement of this Plan or the Confirmation Order;
- 18 p. to remedy any breach or default occurring under this Plan;
- 19 q. to resolve and finally determine all disputes that may relate to, impact
20 on or arise in connection with this Plan;
- 21 r. to determine such other matters and for such other purposes as may be
22 provided in the Confirmation Order;
- 23 s. to hear any other matter consistent with the provisions of the
24 Bankruptcy Code; and
- 25 t. to enter a final decree closing the Chapter 11 Case.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

13.1 Modification of Plan. The Debtor may propose amendments to or
modifications of this Plan under § 1127 of the Bankruptcy Code at any time prior to the entry
of the Confirmation Order. After the Confirmation Date, the Reorganized Debtor may
remedy any defects or omissions or reconcile any inconsistencies in this Plan or in the
Confirmation Order in such manner as may be necessary to carry out the purposes and intent
of this Plan so long as the interests of Claimants are not materially and adversely affected.

13.2 Extensions of Time. Notwithstanding any time limitation in this Plan, the Bankruptcy Court may, pursuant to a motion filed with the Bankruptcy Court prior to the expiration of such time limitation and for good cause shown, extend such time limitation.

13.3 Releases and Related Matters.

a. Releases by Holders of Claims for Post-Petition Conduct.

14 As of the Effective Date, in consideration for the obligations of the Debtor and the
15 Reorganized Debtor under the Plan and the cash and other contracts, instruments, releases,
16 agreements or documents to be entered into or delivered in connection with the Plan, each
17 holder of a Claim or Interest will be deemed to forever release, waive and discharge all
18 claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and
19 liabilities (other than the right to enforce obligations under or reserved by the Plan and the
20 contracts, instruments, releases, agreements and documents delivered thereunder and the
21 right to contest Professional Fee Claims), whether liquidated or unliquidated, fixed or
22 contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing
23 or thereafter arising in law, equity or otherwise, that are based in whole or in part on any act,
24 omission, transaction or other occurrence taking place after the Petition Date and through
25 the Effective Date in any way relating to the Debtor, the Chapter 11 Case or the Plan that
26 such Person has, had or may have against (i) the Debtor, (ii) the Debtor's directors, officers,
27 employees, agents and attorneys, (iii) the Committee and its agents, attorneys, and other
28 professionals; (iv) the Pre-Petition Senior Lenders and their agents, attorneys, and other

1 professionals; (v) the DIP Lender and its employees, agents, attorneys and other
2 professionals and (vi) the Exit Facility Lender and its employees, agents, attorneys and other
3 professionals.

4 **b. Releases by the Debtor.**

5 As of the Effective Date, for good and valuable consideration, the adequacy of which
6 is hereby confirmed, the Debtor and the Reorganized Debtor and any and all Persons
7 claiming through or on behalf of the Debtor or the Reorganized Debtor including, without
8 limitation, the Committee, will be deemed to forever release, waive and discharge all claims,
9 obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and
10 liabilities whatsoever in connection with or related to the Debtor, the Chapter 11 Case or the
11 Plan (other than the rights of the Debtor or Reorganized Debtor to enforce the Plan and the
12 contracts, instruments, releases, and other agreements or documents delivered thereunder)
13 whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or
14 unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or
15 otherwise that are based in whole or in part on any act, omission, transaction, event or other
16 occurrence taking place on or prior to the Effective Date, except for acts or omissions which
17 constitute willful misconduct or gross negligence, in any way relating to the Debtor, the
18 Reorganized Debtor, the Chapter 11 Case or the Plan, and that may be asserted by the Debtor
19 or its Estate or the Reorganized Debtor against (i) the Debtor's directors, officers,
20 employees, agents and attorneys; (ii) the DIP Lender and its employees, agents, attorneys
21 and other professionals; (iii) the Committee and its agents, attorneys, and other
22 professionals; (iv) the Pre-Petition Senior Lenders and their agents, attorneys, and other
23 professionals; and (v) the Exit Facility Lender and its employees, agents, attorneys and other
24 professionals. The Debtor, the Reorganized Debtor, the Committee, the Pre-Petition Senior
25 Lenders, and DIP Lender, and each of their respective agents may reasonably rely upon the
26 opinions of their respective counsel, accountants, and other experts, and professionals and
27 such reliance, if reasonable, shall conclusively establish good faith and the absence of gross
28 negligence or willful misconduct; provided, however, that a determination that such reliance

1 is unreasonable shall not, by itself, constitute a determination or finding of bad faith, gross
2 negligence or willful misconduct.

3 **c. Injunction Related to Releases.**

4 The Confirmation Order will permanently enjoin the commencement or prosecution
5 by any Person, whether directly, derivatively or otherwise, of any claims, obligations, suits,
6 judgments, damages, demands, debts, rights, causes of action or liabilities released pursuant
7 to the Plan, including pursuant to the releases in this Section 13.3.

8 **13.4 Dissolution of the Committee.** On the Effective Date, the Committee shall
9 dissolve automatically, whereupon its members, Professionals, and agents shall be released
10 from any further duties and responsibilities in the Chapter 11 Case and under the Bankruptcy
11 Code, except with respect to applications for Professional Fee Claims. The Professionals
12 retained by the Committee shall be entitled to compensation and reimbursement of (i) fees
13 and expenses for services rendered through and including the date it is dissolved, and (ii)
14 fees and expenses for services rendered in connection with applications for allowance of
15 compensation and reimbursement of expenses pending on the Effective Date or filed after
16 the Effective Date pursuant to Section 2.2 of the Plan or any objections thereto.

17 **13.5 Default.** If the reorganized Debtor fails to make any payment, or to perform
18 any other payment obligation required under the Plan, for more than thirty (30) days after
19 the time specified in the Plan for such payment, any member of a Class affected by the
20 default may serve upon the Reorganized Debtor a written notice of default. If the
21 Reorganized Debtor fails within thirty (30) days after the date of service of the notice of
22 default either: (i) to cure the default; (ii) to obtain from the Bankruptcy Court an extension
23 of time to cure the default; or (iii) to obtain from the Bankruptcy Court a determination that
24 no default occurred, then the Reorganized Debtor is in default with respect to such payment
25 or obligation (a “**Material Default**”) under the Plan. Notwithstanding the foregoing, a
26 default or material default under the plan may be waived in writing by holders of more than
27 50% of the outstanding allowed amount of the affected Claim(s) not including claims held
28 by insiders or former insiders or entities controlled by insiders or former insiders. Upon

1 Material Default, such member of such Class affected by the default: (i) may file and serve
2 a motion to dismiss the Chapter 11 Case or to convert the Chapter 11 Case to Chapter 7; or
3 (ii) seek from the Bankruptcy Court any other appropriate remedy. The United States Trustee
4 is exempt from providing any notice of default prior to filing any motion if the Reorganized
5 Debtor fails to file required post-confirmation reports or pay fees due and payable under 28
6 U.S.C. Section 1930.

7 **13.6 Notices.** Any pleading, notice or other documents required by the Plan or the
8 Confirmation Order to be served on or delivered to the Debtor, the Reorganized Debtor, or
9 the Committee must be sent by overnight delivery service, facsimile transmission, courier
10 service or messenger to (and must also include email notice):

11 If to the Debtor, to:

12 Alvaro Gazzolo
13 113 West G Street Suite 1686
14 San Diego, CA 92101
15 Attention: Alvaro Gazzolo
16 Email: Alvaro.Gazzolo@ingenu.com

17 and

18 Sullivan Hill Rez & Engel
19 600 B Street, 17th Floor
20 San Diego, CA 92101
21 Attention: Christopher V. Hawkins
22 Telefacsimile: (619) 595-3218
23 Email: hawkins@sullivanhill.com
24 (Counsel to the Debtor)

25 If to the Reorganized Debtor, to:

26 Alvaro Gazzolo
27 113 West G Street Suite 1686
28 San Diego, CA 92101
29 Attention: Alvaro Gazzolo
30 Email: Alvaro.Gazzolo@ingenu.com

31 If to the United States Trustee, to:

32 Haeji Hong, Esq.
33 OFFICE OF THE U.S. TRUSTEE
34 402 W. Broadway, Ste. 600

1 San Diego, CA 92101
2 Email:
3 (United States Trustee)

4 **13.7 Choice of Law.** Except to the extent that (a) the Bankruptcy Code or other
5 federal statutes or regulations, or (b) the Delaware General Corporation Law, are applicable,
6 the rights and obligations arising under the Plan shall be governed by, construed, and
7 enforced in accordance with the laws of the State of California without giving effect to the
8 principles of conflict of laws thereof. In the event of an inconsistency between the terms of
9 this Plan and the laws of the State of California, the terms of this Plan shall prevail.

10 **13.8 Captions.** Paragraph captions used herein are for convenience only and shall
11 not affect the construction of this Plan.

12 Dated: October 30, 2020 SULLIVAN HILL REZ & ENGEL
13 A Professional Law Corporation

14 By: /s/ Christopher V. Hawkins
15 Christopher V. Hawkins
16 Attorneys for Debtor and Debtor in Possession
17 INGENU INC.

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Exhibit B

Class 9 - Secured Tax Claims	Claim Amount
Total	\$0.00

Other Secured Claims - Class 10	Claim Amount	Source
Snezana Stjepovic	\$35,542.79	Schedules
Frank Castaneda	\$18,838.71	Schedules
Travis Hornung	\$21,291.28	Schedules
William Simpson	\$35,153.08	Schedules
Hafiz Hameed	\$28,364.94	Schedules
Serrano, Lisa D	\$10,207.23	Schedules
TTM	\$101,536.88	Schedules
Total	\$250,934.91	

Class 11 - General Unsecured	Amount
Accruent	\$29,490.00
Aether Wind Technologies, Inc.	\$6,000.00
AIG Property Casualty, Inc.	\$0.00
Air802	\$236.00
Akin Gump	\$17,969.29
Allied Business Intelligence, Inc. (ABI)	\$40,999.00
Altium Inc	\$2,775.00
Alvaro Gazzolo (Insider)	\$192,307.80
Alvaro Gazzolo - International Media Consultancy, Inc. (Insider)	\$86,690.35
American Tower Corporation ATC	\$533,928.49
APS	\$364.07
Aramark	\$3,382.59
Arizona Department of Economic Security DES Unemployment Tax	\$151.20
Arizona Dept. of Revenue	\$100.00
AT & T Mobility CC	\$24,833.50
AT&T Mobility	\$1,496.54
Avant, Doug	\$7,024.69
Avison Young Arizona, Ltd Avison Young	\$31,986.34
B&T Group Holdings, Inc	\$2,400.00
Babak Cyrus Razi (Insider)	\$21,139.71
BDO USA, LLP	\$39,403.00
BeneTrac	\$1,200.00
Beniquez, Saul	\$8,006.79
Bernalillo County Treasurer	\$95.18
BlueStream Professional Services, LLC	\$148,126.65
BLUMBERG LAW GROUP LLP	\$31.20
Bockenhauer, Marychello	\$4,497.05
Boesel, Rob	\$14,240.45
Buita, Joshua T	\$3,535.19
Bureau of the Treasury	\$533.43
Business Wire, Inc.	\$2,750.00
California Secretary of State	\$25.00
Canon	\$2,868.03
Carpenter, David	\$7,553.31
CCH Incorporated	\$3,598.21
Charney IP Law	\$10,107.00
Cintas Corporation No. 2 Cintas Corp/Cintas First Aid & Safe	\$1,098.72
City of Columbus DPU	\$693.59
City of Concord	\$311.37
CITY OF GARLAND COREY WORSHAM RTA	\$196.02
City of Lake Worth	\$178.34
City of Mesa	\$76.84
City of Oceanside	\$71.00
City of Rock Hill	\$171.56
City of San Marcos Business Licensing	\$61.00
City of Scottsdale	\$50.00
Clarion Events Pte. Ltd.	\$8,000.00
Colleen Cleary	\$64,810.80
Columbus City Treasurer Electric Services	\$306.63
Compliance International	\$1,325.00
Concierge Cleaning Services	\$6,185.14
Conductive Containers, Inc.	\$1,119.22
Cooley LLP	\$113,244.14

Class 11 - General Unsecured	Amount
County of San Bernardino	\$1,639.65
Cox Communication San Diego	\$2,316.64
COX Communications Phoenix	\$3,858.48
CPA Global Limited	\$31,015.23
CPS Energy / City Public Service Board	\$111.05
Crown Castle USA Inc.	\$1,975,304.12
CT Corporation	\$299.00
DDH Enterprise, Inc	\$336,050.05
Delaware Secretary of State	\$269,897.40
Dell C/O DELL USA L.P.	\$24,310.44
Deloitte Tax LLP	\$18,899.00
Digi Key Corp	\$497.44
Digital Talent Agents, LLC dba Influence & Co.	\$15,000.00
Dominion Virginia Power	\$1,108.52
Doug S. Franke	\$28,806.33
Duke Energy	\$2,172.70
El Paso Electric	\$86.23
Electronic Surface	\$12,011.38
ElectSolve Technology Solutions & Svcs	\$2,000.00
Entergy Louisiana LLC	\$210.79
Entergy Louisiana LLC	\$290.48
Equihua, Nancy J	\$14,001.57
ESMI, Inc.	\$8,588.13
Espey, Dennis	\$2,173.25
Fabian Tucker	\$115.17
Faciliteq AZ LLC	\$10,645.02
Fang, Jianhong	\$3,086.70
Fang, Jianhong	\$11,219.07
FedEx	\$52.60
Ferderick Price	\$3,169.70
First Class Vending, Inc.	\$3,259.85
Flextronics International USA Inc	\$1,274,482.19
Flextronics Sales & Marketing Asia Pacific Ltd.	\$1,274,482.19
Foley & Lardner LLP	\$254,789.81
FPL/Bankruptcy Dept/RRDL/LFO	\$501.67
Franchise Tax Board	\$44.00
Freeman	\$3,356.75
Georgia Power	\$360.67
GetGo Inc. Subsidiary of LogMeIn Inc.	\$7,273.11
Gifford, Nick	\$4,766.61
GraphiCode Inc.	\$1,020.00
Guadalupe County	\$195.20
Hall, Brett	\$5,222.00
Hameed, Imran	\$7,152.18
Harold Jordan	\$62,042.90
Haulaway Storage Containers, Inc.	\$728.00
HealthEquity	\$41.30
Hiew, Loren	\$2,297.37
HiTem, Inc.	\$549,315.10
Hughes, Matthew	\$15,587.28
Humble Independent School District Tax Collector	\$199.38
iDeals Solution Group	\$5,040.00
iGOE	\$417.00

Class 11 - General Unsecured	Amount
Indeed, Inc	\$291.69
Indianapolis Power & Light Company	\$536.30
Innovative Metal Products, Inc.	\$6,052.30
Insulated Wire, Inc.	\$8,637.38
Internal Revenue Service (IRS)	\$126,050.47
Iron Mountain	\$716.60
Jordan & Company	\$48,930.00
Jordan, Cynthia M	\$5,027.46
Kaiser	\$0.00
Kang, Chaoming	\$7,773.42
KBSII Horizon Tech Center, LLC	\$222,548.41
Kish, David W	\$5,429.56
Koenig, Michelle	\$3,836.36
Krishnakumar, Sreelakshmi	\$6,772.05
Kumar, Rahul	\$3,663.27
Kupstas, Robert	\$2,000.02
Landsberg Orora	\$2,376.00
Lark Engineering, Inc.	\$28,100.00
Larry Gaddes PCAC, CTA William county Tax Collector	\$1,037.16
Latin America Regulatory Compliance Group, LLC	\$3,875.00
Law Office of Matthew J. Day PLLC	\$33,889.32
Level 3 Communications TW Telecom	\$8,236.06
Liberty Test Equipment, Inc.	\$4,929.57
Lighthorse Technologies, Inc.	\$9,324.28
Lightwave Broadband, LLC	\$400.00
Title & Co	\$3,055.00
LKP Global Law, LLP	\$46,924.19
LogiSense Corporation	\$174,876.84
Manpower Temp Services	\$3,067.73
Marietta	\$118.48
Mark Malopy	\$14,890.27
Matthew Hughes	\$238.65
Md7, LLC	\$63,950.00
Memphis Light, Gas and Water Division	\$270.68
MetLife Small Business Center	\$7,724.24
MISSION FEDERAL CREDIT UNION	\$96,902.00
Mobile Mark, Inc.	\$676.50
Mouser Electronics, Inc.	\$26.92
Multek Technologies Limited	\$5,200.00
Mutual of Omaha c/o Sandy Schwennesen	\$4,450.51
Myers, Ted	\$13,833.03
Nashville Electric Service	\$290.45
Nemko Canada	\$26,064.00
Newport Board Group LLC	\$45,000.00
Nokia Solutions and Networks US, LLC SAC Wireless LLC	\$72,294.00
Northcentral Electric Power Association	\$72.80
NV Energy	\$174.03
Octiv Inc.	\$8,100.00
Ohio Power Company dba AEP Ohio	\$148.30
Oliveira, Andrew	\$1,553.75
Oracle America, Inc.	\$9,485.26
Orlando Utilities Commission	\$79.45
OSI Electronics	\$142,542.74

Class 11 - General Unsecured	Amount
Palomar Communications	\$5,250.00
Parker Hannifin Corporation	\$10,248.52
Patel, Jignesh	\$1,817.42
Pawar, Avinash	\$3,240.82
Pedernales Electric Cooperative, Inc.	\$170.89
Peralta, Michael	\$3,246.71
Peshin, Philip	\$6,496.04
Phoenix Mecano, Inc.	\$157,814.88
Piedmont Electric Membership Cooperative	\$139.37
Pinnacle Towers LLC	\$4,163,159.33
Pitney Bowes	\$234.57
Pompano Beach Permit Number 16 8062	\$430.00
Praetorian Group, Inc.	\$6,800.00
PRECISION GRAPHIC SYSTEMS	\$610.68
Pricewaterhouse Coopers LLP.	\$60,778.00
Principal Financial Group	\$0.71
Promar Designs, Inc.	\$10,000.00
Pullman, Aaron	\$3,736.68
Quality Systems Integrated Corporation	\$3,161.13
Ramsey Electronics, Inc.	\$3,793.60
Richardson RFPD	\$460.00
Riverside County Tax Collector	\$5,678.31
Rocky Mountain Power	\$148.73
Roqueni, Jose M	\$60,786.28
Rose Bopla Phoenix Mecano, Inc.	\$126,614.40
RTx Technology Co., Ltd.	\$22,000.00
Ryan, LLC	\$3,875.00
Salt River Project	\$384.51
San Diego County Tax Collector	\$95,711.17
San Diego Pension Consultants	\$250.00
Sandra Phan	\$29,965.39
Santa Fe ISD	\$184.96
SBA Network Services, LLC	\$1,102,012.38
Sematext Group, Inc.	\$4,655.00
Serrano, Lisa D	\$28,738.05
Shelby County Trustee	\$188.65
Sheppard Mullin Richter & Hampton LLP	\$3,785.70
Signa Digital Solutions	\$1,682.67
Silicon Valley Bank Mastercard	\$43,718.40
SkyRiver Communications, Inc. Accounts Receivable	\$1,145.00
Srikanth Uppala	\$216.05

Class 11 - General Unsecured	Amount
SRP	\$304.27
SSAE 16 Professionals, LLP	\$26,074.00
Staples Business Advantage Staples Contract & Commercial, In	\$13,435.79
StarTex Power Constellation Newenergy, Inc.	\$374.10
State of California EDD	\$40,853.07
Stjepovic, Ana	\$6,432.39
Strawn, Mark	\$49,384.15
Streamline LLC	\$7,048.13
Suelyn Manush Wallace	\$17,328.47
Sunil Agrawal	\$1,800.00
Talley Inc.	\$1,041.12
Tapia, Guadalupe	\$2,609.16
TECO	\$81.00
Tessco Technologies, Inc.	\$3,084.84
The City of East Point Georgia	\$582.38
The ProSource Group, Inc.	\$33,750.00
Thoughtclan Technologies Pvt. Ltd.	\$27,711.30
Timesys Corporation	\$23,875.00
TN Metropolitan Trustee	\$136.99
Tower Resource Management, LLC	\$121,905.80
Town of Landis	\$57.80
Tran, Phong	\$4,591.34
Tri County Electric Cooperative, Inc.	\$151.93
Trilliant Networks (Canada) Inc.	\$199,170.39
Underwriters Laboratories Inc.	\$1,200.00
United Health Care Wells Fargo Lockbox, E2001 049,	\$45,831.69
United of Omaha Life Insurance Company	\$2,030.05
United States Treasury	\$21,352.71
Vectus	\$347.00
Verizon Wireless	\$25,929.62
Vicky Taylor	\$51,344.93
WellAware Holdings Inc.	\$218,400.00
Werner, Dan	\$8,871.29
West End Hotel LLC C/O Marshall Fried	\$73,231.42
Westpak, Inc.	\$1,475.00
William County Trustee	\$45.00
William Schmidt	\$75,526.71
Witz Communications Inc.	\$79,943.50
Xcel Energy Public Service Company of Colorado	\$431.38
Yadav, Pratik	\$3,320.12
York Electric Cooperative, Inc.	\$109.86
Zhang, Qi	\$8,187.64
Babak Cyrus Razi (Insider)	\$0.00
Department of Industrial Relations	\$330,220.00
Department of Industrial Relations	\$139,311.00
Total ¹	\$16,623,919.97

¹In addition to the foregoing, the claims in Classes 4-8 & 10 will be treated together with Class 11 for distributions purposes, bringing the aggregate claim amount to \$44,679,865.12. Grid (Class 4) is an entity controlled by Babak Razi, a former insider and CEO of the Debtor.

Exhibit C

**Exhibit C
Page 131**

Ingenu, Inc. - Effective Date Payments

Exit Facility	\$1,000,000.00
DIP Loan	\$400,000.00 ¹
Administrative Claims	\$85,714.00 ²
Class 1 Priority Nontax Claims	\$55,343.79
Class 2 Prepetition First Lien Claim of Lakewood	\$86,366.69
United States Trustee Fee Payment	\$1,950.00
Total	\$629,374.48
Surplus	\$370,625.52

¹
The Debtor believes that NDJR will allow additional time for repayment should the Debtor need it.

²
This is an estimated figure.

Ingenu Inc. - Cash Flow Projection Under Plan of Reorganization ("Plan")

	2020		2021			2022	
	Q4 ¹	Q1	Q2	Q3	Q4	Q1	Q2
Revenue	\$0	\$8,400	\$144,000	\$593,000	\$121,875	\$3,313	\$0
Operating expenses							
Compensation	\$124,901	\$122,501	\$122,501	\$122,501	\$122,501	\$122,501	\$122,501
Patents	2,230	4,460	2,230	-	-	-	-
Data center	17,008	14,755	14,755	14,755	14,755	14,755	14,755
Storage	16,450	14,910	14,910	14,910	14,910	14,910	14,910
Insurance	840	840	840	840	840	840	840
Professional fees	-	-	-	-	-	-	-
Other administrative	675	405	405	405	405	405	405
Total Operating expenses	162,104	157,871	155,641	153,411	153,411	153,411	153,411
EBITDA	(\$162,104)	(\$149,471)	(\$11,641)	\$439,589	(\$31,536)	(\$150,098)	(\$153,411)
Amortization	34,613	34,613	34,613	34,613	34,613	34,613	34,613
EBIT	(\$196,716)	(\$184,083)	(\$46,253)	\$404,977	(\$66,148)	(\$184,711)	(\$188,023)
Interest expense							
DIP Facility	6.1%	\$2,263	\$0	\$0	\$0	\$0	\$0
Exit Facility	5.0%	1,804	4,644	5,136	5,367	5,401	5,316
Total Interest expense	\$4,067	\$4,644	\$5,136	\$5,367	\$5,401	\$5,316	\$5,523
Debtor's counsel ²	150,000	-	-	-	-	-	-
Senior Creditor's counsel ²	32,308	-	-	-	-	-	-
Special IP counsel ²	13,000	-	-	-	-	-	-
Sherwood Partners	55,000	-	-	-	-	-	-
Accounting ²	13,000	-	-	-	-	-	-
U.S. Trustee's fee	1,950	1,625	1,625	1,625	1,625	1,625	1,625
Payments to unsecured claims ³	-	-	-	-	-	-	22,805
Net Income	(\$466,041)	(\$190,352)	(\$53,014)	\$397,985	(\$73,174)	(\$191,652)	(\$217,976)
Operating activities:							
Net income	(\$466,041)	(\$190,352)	(\$53,014)	\$397,985	(\$73,174)	(\$191,652)	(\$217,976)
Amortization	34,613	34,613	34,613	34,613	34,613	34,613	34,613
PIK interest	1,804	4,644	5,136	5,367	5,401	5,316	5,523
Accounts receivable	-	8,125	-	-	-	-	-
Net cash flow from operating activities	(\$429,624)	(\$142,971)	(\$13,266)	\$437,964	(\$33,161)	(\$151,723)	(\$177,840)
Financing activities:							
Payments to Priority Tax Claims ⁴	\$0	(\$32,676)	(\$32,676)	(\$32,676)	(\$32,676)	(\$32,676)	(\$32,676)
DIP Facility	(175,048)	-	-	-	-	-	-
Pre-Petition First Lien Claim	(87,367)	-	-	-	-	-	-
Exit Facility	616,730	175,646	45,941	-	-	-	55,462
Net cash flow from financing activities	354,316	142,971	13,266	(32,676)	(32,676)	(32,676)	22,786
Net increase (decrease) in cash	(\$75,308)	\$0	\$0	\$405,289	(\$65,836)	(\$184,399)	(\$155,054)
Cash at beginning of period	75,308	-	-	-	405,289	339,453	155,054
Cash at end of period	\$0	\$0	\$0	\$405,289	\$339,453	\$155,054	\$0
Debt schedule ⁵							
DIP Facility	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Pre-Petition First Lien Claim	-	-	-	-	-	-	-
Exit Facility	618,534	798,824	849,901	855,268	860,669	865,985	926,970

¹ Assumes company exits bankruptcy on November 30, 2020.

² November per Chapter 11 budget.

³ Assumes 28% combined federal and state tax rate.

⁴ Based on Priority Tax Claims of \$653,313 paid quarterly over 5 years.

⁵ Assumes Pre-Petition Second Lien Claim is fully converted to equity.

Chapter 7 Liquidation Analysis

	<u>Scheduled Value</u>	<u>Liquidation Value</u>
Assets		
Cash	\$22.00	\$22.00
Accounts Receivable	\$31,000.00	\$31,000.00
Interest in Indo Subsidiary	Unknown	
Inventory	\$1,320,000.00	\$1,320,000.00
Office furniture/fixtures/	\$150,000.00	\$20,000.00
Patents/Copyrights/	Unknown	
Domain Name	Unknown	
Licenses	Unknown	
Source Code	Unknown	
ASIC - Plan for Chips	Unknown	
Unused Net Operating Loss	Unknown	
Causes of Action v. Third Parties	Unknown	
<i>Available Proceeds</i>	<i>\$1,501,022.00</i>	<i>\$1,371,022.00</i>

	<u>Claim Amount</u>	<u>Dollar Recovery</u>	<u>Recovery Rate</u>
All Secured Creditors - Classes 2-8, 10			
Lakefront Associates LLC	\$86,366.69	\$86,366.69	100.00%
NDJR (2nd lien) Grid	\$16,243,041.14	\$1,284,655.31	7.91%
Grid Partners III A (3rd lien): ¹	\$17,853,654.92	\$0.00	0.00%
John S. Gilbert or Barbara			
Gilbert (4th lien):	\$1,151,780.82	\$0.00	0.00%
LFT (4th lien):	\$2,297,758.90	\$0.00	0.00%
JBJK (4th lien):	\$3,764,426.71	\$0.00	0.00%
Trilliant Networks (Canada)			
Inc. (5th Lien)	\$2,737,388.89	\$0.00	0.00%
Snezana Stjepovic	\$35,542.79	\$0.00	0.00%
Frank Castaneda	\$18,838.71	\$0.00	0.00%
Travis Hornung	\$21,291.28	\$0.00	0.00%
William Simpson	\$35,153.08	\$0.00	0.00%
Hafiz Hameed	\$28,364.94	\$0.00	0.00%
Serrano, Lisa D	\$10,207.23	\$0.00	0.00%
TTM	\$101,536.88	\$0.00	0.00%
<i>Total:</i>	<i>\$44,385,352.98</i>	<i>\$1,371,022.00</i>	
<i>Available Proceeds:</i>		<i>\$0.00</i>	
Chapter 7 Trustee Fees	\$41,130.66	\$0.00	0.00%
<i>Available Proceeds:</i>	<i>\$0.00</i>		
Chapter 7 Administration Fees	\$0.00	\$0.00	0.00%
<i>Available Proceeds:</i>	<i>\$0.00</i>		

¹Grid is an entity controlled by Babak Razi, a former insider and CEO of the Debtor.

Ingenu, Inc.
Chapter 7 Liquidation Analysis

	Claim Amount	Dollar Recovery	Recovery Rate
Chapter 11 Administration Fees			
Sullivan Hill Rez & Engel, APLC	\$0.00	\$0.00	0.00%
Shustak Reynolds & Partners	\$0.00	\$0.00	0.00%
<i>Available Proceeds:</i>	\$0.00		
Priority Tax Claims - No Class			
Internal Revenue Service	\$463,702.14	\$0.00	0.00%
State of California EDD	\$87,291.54	\$0.00	0.00%
Arizona Dept. of Revenue	\$2,900.00	\$0.00	0.00%
Arizona Dept. of Revenue	\$200.00	\$0.00	0.00%
County of San Bernardino	\$419.75	\$0.00	0.00%
Sumner County Trustee	\$42.54	\$0.00	0.00%
Riverside County Tax	\$1,633.34	\$0.00	0.00%
Franchise Tax Board	\$1,681.95	\$0.00	0.00%
Bureau of Revenue and Taxation Parish of Jefferson	\$303.53	\$0.00	0.00%
California Department of Tax & Fee Admin	\$562.00	\$0.00	0.00%
City of Union City Property	\$173.29	\$0.00	0.00%
Collin County Tax Collector	\$315.31	\$0.00	0.00%
Dekalb County Tax	\$28.23	\$0.00	0.00%
DENTON COUNTY TAX			
ASSESSOR/COLLECTOR	\$590.61	\$0.00	0.00%
Fulton County Tax	\$445.99	\$0.00	0.00%
Harris County Tax Collector	\$1,056.80	\$0.00	0.00%
City of Hendersonville Property Tax Office	\$16.00	\$0.00	0.00%
Marion County Tax Collector	\$73.82	\$0.00	0.00%
PASADENA ISD TAX			
ASSESSOR/COLLECTOR	\$210.28	\$0.00	0.00%
Travis County Tax Office	\$1,368.58	\$0.00	0.00%
Wilson County Tax Office	\$235.68	\$0.00	0.00%
ALDINE I.S.D.	\$938.31	\$0.00	0.00%
ALDINE I.S.D.	\$754.44	\$0.00	0.00%
ALLEN ISD	\$978.43	\$0.00	0.00%
Bexar County	\$10,949.61	\$0.00	0.00%
Bexar County District Clerk	\$579.00	\$0.00	0.00%
CITY OF ALLEN	\$332.19	\$0.00	0.00%
City of AZLE	\$988.48	\$0.00	0.00%
CITY OF FRISCO	\$108.52	\$0.00	0.00%
City of Garland	\$1,262.92	\$0.00	0.00%
CITY OF LUCAS	\$198.20	\$0.00	0.00%
County of San Bernardino	\$2,059.40	\$0.00	0.00%
DALLAS COUNTY	\$8,538.32	\$0.00	0.00%
Fort Bend County	\$161.72	\$0.00	0.00%
Fort Bend County	\$1,759.43	\$0.00	0.00%

Chapter 7 Liquidation Analysis

	Claim Amount	Dollar Recovery	Recovery Rate
Galveston County	\$2,383.12	\$0.00	0.00%
Garland ISD	\$2,376.35	\$0.00	0.00%
John P Dilman	\$5,780.84	\$0.00	0.00%
Lewisville ISD	\$934.77	\$0.00	0.00%
Metro Government of	\$67.68	\$0.00	0.00%
Metro Government of	\$83.73	\$0.00	0.00%
Metro Government of	\$235.19	\$0.00	0.00%
Metro Government of	\$246.13	\$0.00	0.00%
Metro Government of	\$255.34	\$0.00	0.00%
Metro Government of	\$268.92	\$0.00	0.00%
Metro Government of	\$2,065.79	\$0.00	0.00%
Metro Government of	\$2,065.79	\$0.00	0.00%
Metro Government of	\$2,365.72	\$0.00	0.00%
Metro Government of	\$2,365.72	\$0.00	0.00%
Metro Government of	\$2,739.57	\$0.00	0.00%
Metro Government of	\$2,739.57	\$0.00	0.00%
Metro Government of	\$3,115.49	\$0.00	0.00%
Metro Government of	\$3,115.49	\$0.00	0.00%
Metro Government of	\$3,115.49	\$0.00	0.00%
PARKER CAD	\$1,080.81	\$0.00	0.00%
Plano Independent School	\$1,777.26	\$0.00	0.00%
Riverside County Tax	\$7,311.65	\$0.00	0.00%
Sumner County Trustee	\$42.54	\$0.00	0.00%
TARRANT COUNTY	\$9,790.99	\$0.00	0.00%
Texas City ISD	\$488.95	\$0.00	0.00%
Collin County Tax Collector	\$384.59	\$0.00	0.00%
Collin County Tax Collector	\$146.74	\$0.00	0.00%
Collin County Tax Collector	\$152.97	\$0.00	0.00%
<i>Total:</i>	<i>\$654,197.69</i>		
<i>Available Proceeds:</i>	<i>\$0.00</i>	<i>\$0.00</i>	

Priority Unsecured Claims - Class 1

Colleen Cleary	\$13,650.00	\$0.00	0.00%
Ferderick Price	\$13,650.00	\$0.00	0.00%
United Healthcare Insurance Co	\$28,043.79	\$0.00	0.00%
<i>Total:</i>	<i>\$55,343.79</i>		
<i>Available Proceeds:</i>	<i>\$0.00</i>	<i>\$0.00</i>	

General Unsecured Claims - Cla \$16,623,919.97 \$0.00 0.00%

Total Claims: \$61,718,814.43

Available Proceeds: \$0.00

Equity Security Holders \$120,000,000 \$0.00 0.00%

Ingenu, Inc.
Chapter 7 Liquidation Analysis

	Claim Amount	Dollar Recovery	Recovery Rate
<i>Available Proceeds:</i>		\$0.00	

Chapter 11 Analysis - Best Case - \$500,000

	Claim Amount	Dollar Recovery	Recovery Rate
Secured Creditors - Classes 2-8, 10			
Lakefront Associates LLC (1st Lien)	\$86,366.69	\$86,366.69	100.00%
NDJR (2nd lien) Grid Partners II:	\$16,243,041.14	Converted to Equity	
Grid Partners III A (3rd lien): ¹	\$17,853,654.92	Treated in Class 11	
John S. Gilbert or Barbara Gilbert (4th lien):	\$1,151,780.82	Treated in Class 11	
LFT (4th lien):	\$2,297,758.90	Treated in Class 11	
JBJK (4th lien):	\$3,764,426.71	Treated in Class 11	
Trilliant Networks (Canada) Inc. (5th Lien)	\$2,737,388.89	Treated in Class 11	
Snezana Stjepovic	\$35,542.79	Treated in Class 11	
Frank Castaneda	\$18,838.71	Treated in Class 11	
Travis Hornung	\$21,291.28	Treated in Class 11	
William Simpson	\$35,153.08	Treated in Class 11	
Hafiz Hameed	\$28,364.94	Treated in Class 11	
Serrano, Lisa D	\$10,207.23	Treated in Class 11	
TTM	\$101,536.88	Treated in Class 11	
<i>Total:</i>	\$44,385,352.98	\$86,366.69	
Chapter 11 Administration Fees			
Sullivan Hill Rez & Engel, APLC	\$150,000.00	\$150,000.00	100.00%
Shustak Reynolds & Partners	\$13,000.00	\$13,000.00	100.00%
<i>Total</i>	\$163,000.00	\$163,000.00	
Priority Tax Claims - Unclassified	\$654,197.69	\$654,197.69	100.00%
Priority Unsecured Claims - Class 1			
Colleen Cleary	\$13,650.00	\$13,650.00	100.00%
Ferderick Price	\$13,650.00	\$13,650.00	100.00%
United Healthcare Insurance Company	\$28,043.79	\$28,043.79	100.00%
<i>Total</i>	\$55,343.79	\$55,343.79	
General Unsecured Claims - Class 11	\$16,623,919.97²		
Class 4-8, 10 & 11 Total	\$44,679,865.12³	\$500,000.00	1.12%
Equity Security Holders	\$120,000,000	\$0.00	0.00%
<i>Available Proceeds:</i>	\$0.00		

¹Grid is an entity controlled by Babak Razi, a former insider and CEO of the Debtor.

²This is the aggregate number of general unsecured claims.

³This number includes classes 4-8, 10 and 11. Grid (Class 4) is an entity controlled by Babak Razi, a former insider and CEO of the Debtor.

Chapter 11 Analysis - Mid Case - \$250,000

	Claim Amount	Dollar Recovery	Recovery Rate
Secured Creditors - Classes 2-8, 10			
Lakefront Associates LLC (1st Lien)	\$86,366.69	\$86,366.69	100.00%
NDJR (2nd lien) Grid Partners II:	\$16,243,041.14	Converted to Equity	
Grid Partners III A (3rd lien): ¹	\$17,853,654.92	Treated in Class 11	
John S. Gilbert or Barbara Gilbert (4th lien):	\$1,151,780.82	Treated in Class 11	
LFT (4th lien):	\$2,297,758.90	Treated in Class 11	
JBJK (4th lien):	\$3,764,426.71	Treated in Class 11	
Trilliant Networks (Canada) Inc. (5th Lien)	\$2,737,388.89	Treated in Class 11	
Snezana Stjepovic	\$35,542.79	Treated in Class 11	
Frank Castaneda	\$18,838.71	Treated in Class 11	
Travis Hornung	\$21,291.28	Treated in Class 11	
William Simpson	\$35,153.08	Treated in Class 11	
Hafiz Hameed	\$28,364.94	Treated in Class 11	
Serrano, Lisa D	\$10,207.23	Treated in Class 11	
TTM	\$101,536.88	Treated in Class 11	
<i>Total:</i>	\$44,385,352.98	\$86,366.69	
Chapter 11 Administration Fees			
Sullivan Hill Rez & Engel, APLC	\$150,000.00	\$150,000.00	100.00%
Shustak Reynolds & Partners	\$13,000.00	\$13,000.00	100.00%
<i>Total</i>	\$163,000.00	\$163,000.00	
Priority Tax Claims - Unclassified	\$654,197.69	\$654,197.69	100.00%
Priority Unsecured Claims - Class 1			
Colleen Cleary	\$13,650.00	\$13,650.00	100.00%
Ferderick Price	\$13,650.00	\$13,650.00	100.00%
United Healthcare Insurance Company	\$28,043.79	\$28,043.79	100.00%
<i>Total</i>	\$55,343.79	\$55,343.79	
General Unsecured Claims - Class 11	\$16,623,919.97²		
Class 4-8, 10 & 11 Total	\$44,679,865.12³	\$250,000.00	0.56%
Equity Security Holders	\$120,000,000	\$0.00	0.00%
<i>Available Proceeds:</i>	\$0.00		

¹Grid is an entity controlled by Babak Razi, a former insider and CEO of the Debtor.

²This is the aggregate number of general unsecured claims.

³This number includes classes 4-8, 10 and 11. Grid (Class 4) is an entity controlled by Babak Razi, a former insider and CEO of the Debtor.

Ingenu, Inc.
Chapter 11 Analysis - Worst Case - \$0

	Claim Amount	Dollar Recovery	Recovery Rate
Secured Creditors - Classes 2-8, 10			
Lakefront Associates LLC (1st Lien)	\$86,366.69	\$86,366.69	100.00%
NDJR (2nd lien) Grid Partners II:	\$16,243,041.14	Converted to Equity	
Grid Partners III A (3rd lien): ¹	\$17,853,654.92	Treated in Class 11	
John S. Gilbert or Barbara Gilbert (4th lien):	\$1,151,780.82	Treated in Class 11	
LFT (4th lien):	\$2,297,758.90	Treated in Class 11	
BJJK (4th lien):	\$3,764,426.71	Treated in Class 11	
Trilliant Networks (Canada) Inc. (5th Lien)	\$2,737,388.89	Treated in Class 11	
Snezana Stjepovic	\$35,542.79	Treated in Class 11	
Frank Castaneda	\$18,838.71	Treated in Class 11	
Travis Hornung	\$21,291.28	Treated in Class 11	
William Simpson	\$35,153.08	Treated in Class 11	
Hafiz Hameed	\$28,364.94	Treated in Class 11	
Serrano, Lisa D	\$10,207.23	Treated in Class 11	
TTM	\$101,536.88	Treated in Class 11	
<i>Total:</i>	\$44,385,352.98	\$86,366.69	
Chapter 11 Administration Fees			
Sullivan Hill Rez & Engel, APLC	\$150,000.00	\$150,000.00	100.00%
Shustak Reynolds & Partners	\$13,000.00	\$13,000.00	100.00%
<i>Total</i>	\$163,000.00	\$163,000.00	
Priority Tax Claims - Unclassified	\$654,197.69	\$654,197.69	100.00%
Priority Unsecured Claims - Class 1			
Colleen Cleary	\$13,650.00	\$13,650.00	100.00%
Ferderick Price	\$13,650.00	\$13,650.00	100.00%
United Healthcare Insurance Company	\$28,043.79	\$28,043.79	100.00%
<i>Total</i>	\$55,343.79	\$55,343.79	
General Unsecured Claims - Class 11	\$16,623,919.97²		
Class 4-8, 10 & 11 Total	\$44,679,865.12³	\$0.00	0.00%
Equity Security Holders	\$120,000,000	\$0.00	0.00%
<i>Available Proceeds:</i>	\$0.00		

¹Grid is an entity controlled by Babak Razi, a former insider and CEO of the Debtor.

²This is the aggregate number of general unsecured claims.

³This number includes classes 4-8, 10 and 11. Grid (Class 4) is an entity controlled by Babak Razi, a former insider and CEO of the Debtor.